

VERBATIM ¹RECORD OF TRIAL ²

(and accompanying papers)

of

MANNING, Bradley E.

(Name: Last, First, Middle Initial)

Headquarters and
Headquarters Company,
United States Army Garrison
(Unit/Command Name)

(Social Security Number)

U.S. Army

(Branch of Service)

PFC/E-3

(Rank)

Fort Myer, VA 22211

(Station or Ship)

By

GENERALCOURT-MARTIAL

Convened by

Commander

(Title of Convening Authority)

UNITED STATES ARMY MILITARY DISTRICT OF WASHINGTON

(Unit/Command of Convening Authority)

Tried at

Fort Meade, MD

(Place or Places of Trial)

on

see below

(Date or Dates of Trial)

Date or Dates of Trial:

23 February 2012, 15-16 March 2012, 24-26 April 2012, 6-8 June 2012, 25 June 2012, 16-19 July 2012, 28-30 August 2012, 2 October 2012, 12 October 2012, 17-18 October 2012, 7-8 November 2012, 27 November - 2 December 2012, 5-7 December 2012, 10-11 December 2012, 8-9 January 2013, 16 January 2013, 26 February - 1 March 2013, 8 March 2013, 10 April 2013, 7-8 May 2013, 21 May 2013, 3-5 June 2013, 10-12 June 2013, 17-18 June 2013, 25-28 June 2013, 1-2 July 2013, 8-10 July 2013, 15 July 2013, 18-19 July 2013, 25-26 July 2013, 28 July - 2 August 2013, 5-9 August 2013, 12-14 August 2013, 16 August 2013, and 19-21 August 2013.

¹ Insert "verbatim" or "summarized" as appropriate. (This form will be used by the Army and Navy for verbatim records of trial only.)² See inside back cover for instructions as to preparation and arrangement.

1 A. I asked her to produce a report for me, yes.

2 MJ: What is an EEI?

3 WIT: Ma'am, the information

4
5 , that is compiled and we refer to that as Essential
6 Elements of Information and we publish a report on that.

7 MJ: Proceed.

8 Q. And that report is published quarterly?

9 A. It is published quarterly.

10 Q. But you--but what you didn't--you did not ask for one
11 of the quarterly reports, did you?

12 A. I did not.

13 Q. You asked for a snapshot of EEI information, is that
14 right?

15 A. I did.

16 Q. That snapshot was associated with the years 2008 and
17 2009?

18 A. Yeah.

19 Q. What were you were looking was--for a representative
20 sample?

21 A. I was. The EEI lists get voluminous over time. I see
22 them, I sign them out, I know what is there. To familiarize
23 myself, I wanted a report going back a few years to show me what
24 the foreign adversaries were looking for. And, it was a sample

1 that took over a couple of years to create one report
2 for me.

3 Q. And you did that to prepare for your role as a witness
4 in this case?

5 A. I was going to testify about EEI. I wanted to feel
6 comfortable that yeah, I could say, "Yes, I am responsible for
7 it," but I also reviewed some of it so I wouldn't look like a
8 goof ball.

9 Q. Did you independently verify the information that
10 gave you?

11 A. I have no reason to do that. She is responsible for
12 preparing an EEI report and is a contributor to a report that I
13 send to Congress every quarter. I am pretty certain she gave me
14 what was out of the database. And, some of it I know to be
15 true. Even the stuff that is on the list, I would have known
16 that that was an EEI without the report.

17 Q. Now, that wasn't the only data-call that you did
18 internal to your office, was it?

19 A. It is not.

20 Q. You asked did I get his name----

21 A. That's I can't account for the first
22 name.

23 Q. So we will just call him

24 A. We will call him

1 Q. ----from here on out. You asked to pull
2 some date for you?
3 A. I did.
4 Q. And that was according to what you told me today about
5 4 or 6 weeks ago?
6 A. I think we--we said it was right before we had met in
7 the----
8 Q. With
9 A. ----office with there in wherever that was.
10 Q. In May of 2013?
11 A. Right when I had just changed jobs. Yes.
12 Q. And, you pulled this document to inform your
13 testimony?
14 A. I did.
15 Q. As to specific countries?
16 A. Actually, what I asked for was a listing of over the
17 past years the most successful
18 , and subsequent to that I realized, for me,
19 I only had one end of the spectrum. "Give me some of the ones
20 that were the least successful ." So,
21 yes, there is three pages there.
22 Q. Now when you say, "Least successful,"
23
24 A. Yes.

1 Q. But it was the ?

2 A. Yeah. Generally in

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22 Q. Right.

23 A. But in failing

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6 Q. Mr. Lewis, just so that I am sure--I am clear, you
7 never asked in this data-call with you never asked
8 for representatives--a representative sampling of failed
9 counterintelligence?

10 A. I did not. I wanted to

11 Q.

12
13 A. Yeah, that is what I asked.
14 Q. Now, let's talk about your preparation to testify with
15 the government. This isn't the first time--today is not the
16 first day you met with Major Fein?

17 A. No.

18 Q. Today is not the first day you met with Captain von
19 Elten either?

20 A. No.

21 Q. How many times prior to today would you estimate that
22 you have met with them?

23 A. Prior to today, Major [sic] von Elten, once last week.
24 I spent time with him last week, one day. The good Major--yeah-

1 -Major Fein, met last week a couple of times. I met him once at
2 MDW. And I don't remember meeting him before that. And I can't
3 remember who I had met with before I met Major Fein. There was
4 one other lawyer that I met with once or twice.

5 Q. Right. What is the first--do you remember the first
6 day that they handed you one of the documents relevant to this
7 particular case; and the question is do you remember that day?

8 A. I would say it would have been last Tuesday or
9 Wednesday. But, it was actually a database, it wasn't a
10 document at first.

11 Q. The first thing they showed you was something on a
12 computer?

13 A. Yeah. I reviewed a--the----

14 Q. Portion

15 A. ----the State--the State Department--I don't know the
16 exact name of that.

17 Q. Right. So they showed you something on a computer
18 first?

19 A. I had an opportunity to do some keyword searches of
20 that database.

21 Q. Do you recall what keywords you used?

22 A. I do.

23 Q. What were they?

1 A. I used

2

3

4 Q. What is the next thing you can remember looking at?

5 A. I may not get it in the exact order but----

6 Q. That's fine.

7 A. ----over the course of last Tuesday and Wednesday, I

8 was introduced to CIDNE-I, CIDNE-A and the list of

9 people from over the--I can't remember the name but it had all

10 of I can't remember the

11 exact name of that. I'm sorry, but--

12 Q. So by percentage, how much of your preparation have

13 you done in the last 5 days as a witness?

14 A. 60 percent. 70 percent. That'd be a toughy. I

15 don't--I've thought about it since I've known I was going to be

16 called to testify. So that is--in my mind, I prepped a lot.

17 Q. Just imagining what was going to happen?

18 A. Just thinking what it--you know--what it would be?

19 What it would it entail?

20 Q. Now along with the other preparation you talked about,

21 you told me today that you have reviewed about 40 records from

22 the CIDNE-I database?

23 A. Yeah.

1 Q. And that is--maybe a quarter of those records had
2 information that was, in your mind, responsive to something?

3 A. When I looked at that, yes.

4 Q. And you reviewed about 40 records from the CIDNE-A
5 database?

6 A. I think a little less but yeah, around 36-40,
7 something like that.

8 Q. Maybe about a quarter of those, again, had information
9 that was----

10 A. I think for A, it was closer to a third.

11 Q. All right.

12 A. Of the few that I reviewed.

13 Q. And you reviewed about 10 to 12 I am sorry,
14 the 10 to
15 12 sound about right?

16 A. No more than that.

17 Q. Now, you had testified that you had used the data pull
18 from that you've used the----

19 A. Okay.

20 Q. ----or that you have looked at that document?

21 A. Okay.

22 Q. And you've looked at the document from the data pull
23 from

24 A. I have looked at those. Yes.

1 Q. Both of those documents?

2 A. Yeah. I asked for them so I could look at them.

3 Q. And you've used those to prepare?

4 A. I have.

5 Q. Did you ever--to prepare, did you ever go back and
6 when you were still in the oversight role, did you ever go back
7 to the offensive counterintelligence operations that

8

9 A. No.

10 Q. Just and just--just--okay. Mr. Lewis,
11 were you going to say something?

12 A. Yeah. I want to say, I mean, I am aware of offensive
13 operations

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15 but when I used the stuff that gave me,
16 okay, as those types of things that are going on that are
17 consistent across EEI and a lot of those I could have told you.
18 But I like to have it--I like to see it. I want to believe it.
19 I want to touch it. So this is a representative of what we are

20 For

21 I want to know what was the

22 . So I acquainted myself with
23 that. I could have speak--I could speak it just off-the-cuff
24 and give you things that I have learned through my experience

1 through the years but I wanted to see it. I wanted to verify
2 that what I was going to say is accurate.

3 Q. All right. So let's talk about the off-the-cuff, the
4 potential off-the-cuff testimony. Now, can you testify that
5
6

7 A. Yeah.

8 TC[MAJ FEIN]: Your Honor, objection. This goes to
9 actually after--if the witness is qualified as an expert it goes
10 to the actual substance of his expert testimony. Not whether he
11 is qualified, Your Honor.

12 MJ: Well, this where--this is what he is going to be
13 qualified--I assume based on what I am hearing then is the
14 witness going to go back and compare the old records for things
15 that these countries and look at what is in the
16 charged documents and make some sort of evaluation?

17 TC[MAJ FEIN]: Well, the witness will make an evaluation
18 then, Your Honor, based off of the stipulation--his review of
19 the stipulation of expected testimony of certain witnesses as if
20 he was sitting in the courtroom and by looking at certain
21 documents; yes. But, that is his ultimate opinion. We are not
22 at that stage yet to elicit that opinion.

1 MJ: Well, I understand that but the foundation is we've
2 got to establish a foundation that this witness can make that
3 opinion.

4 TC[MAJ FEIN]: Yes, Your Honor.

5 MJ: And I believe that this is where you are going with
6 this, right Major Hurley?

7 ADC[MAJ HURLEY]: Yes, ma'am.

8 MJ: I am going to overrule that for now.

9 Go ahead.

10 TC[MAJ FEIN]: Yes, Your Honor.

11 Q. And you can do that from memory? The question was can
12 you testify that
13 information from the CIDNE-I database prior to 1 June 2010?

14 A. I wouldn't call that memory. I would call it
15 experience.

16 Q. All right. So you can do that from experience?

17 A. I mean, when you--I read, I brief, I remember things
18 but specific EEI, there is just too many to remember. But I
19 know what

20 I know that
21 as a CI professional and having visibility over those things.

22 Q. Right. Mr. Lewis, but I am asking you can you sort
23 your memory to say I am going to ignore everything that happened

1 after 1 June 2010? I am going to ignore it and I am only going
2 to consider information from 31 May 2010 back in time?

3 A. Can I do that?

4 Q. Can you do it?

5 [Pause.]

6 A. I suppose I could.

7 Q. You suppose so?

8 A. I suppose so. I would have to think what specific
9 operations, , that I may think of and where
10 were those; where were those in the timeline.

11 Q. Do you recall our meeting earlier today, Mr. Lewis?

12 A. I do.

13 Q. Do you recall that part of our meeting where I handed
14 you a document and I asked you to pretend that this document was
15 a qualifying record from the CIDNE-I database?

16 A. I do recall that.

17 Q. Do you recall telling me what--just do you recall is
18 the question I am asking. Do you recall telling me what you
19 would say if your opinion was elicited as to whether
20 would be interested in that information?

21 A. I remember our conver--I remember what I said to you.

22 Q. Right. And what you----

23 A. I mean, that was a big question and I don't know if
24 that fits what you are asking.

1 Q. Sure. It does----

2 A. Okay.

3 Q. ----as a matter of fact. And you said, "My response
4 to that question will be this appears to be in the A-E-I or EEI.
5 So it would be something was interested in?"

6 A. That is probably close to what I said. I probably
7 wouldn't have said it that way.

8 Q. But the close----

9 A. I probably would have based--I would have put
10 experience in there I am sure since I am using my----

11 Q. Right.

12 A. ----experience and my knowledge of would do
13 in----

14 Q. Right.

15 A. ----the operations that we do specifically to
16 determine that information----

17 Q. Sure.

18 A. ----and I would apply that to information that I saw
19 in this fictitious thing that you told me to look at.

20 Q. Right. But you also said you had mentioned as you
21 were going through this----

22 A. Right.

23 Q. ----the EEI. That you would----

24 A. Okay. Okay.

1 Q. ----consider your experience and the EEI. Do you
2 recall that?

3 A. That is the--that is--yes.
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8 Q. When it comes to
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10 A. Mm-hmm[indicating an affirmative response].

11 Q.
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13 A. Mm-hmm[indicating an affirmative response].

14 Q.

15 A.

16 Q. Sorry.

17 A.

18 Q. Yeah.

19 A. No, that is okay. The numbers get in my head too.

20 Q. Right. Me too.

21 A. I think the
22
23

24 Q. Right.

1 A. That is what I said I would say.
2 Q. That is what you've seen in the past,
3
4 A. That is what we've seen in the
5 yes. And are over----
6 Q. Mr. Lewis, just one second.
7 [Pause]
8 Q. Mr. Lewis, prior to your experience here as a witness-
9 ---
10 A. Mm-hmm[indicating an affirmative response].
11 Q. ----have you ever taken a classified document and put
12 a value to it?
13 A. No.
14 ADC[MAJ HURLEY]: Thanks. Nothing further, ma'am.
15 MJ: Redirect on foundation?
16 TC[MAJ FEIN]: Yes, Your Honor. One moment, please?
17 [The trial counsel conferred.]
18 TC[MAJ FEIN]: I am sorry, Your Honor.
19 [END OF PAGE]

REDIRECT EXAMINATION

Questions by the trial counsel[MAJ FEIN]:

Q. Mr. Lewis, a few questions in different areas. First, regarding that snapshot that you've testified now about that produced for you----

A. Mm-hmm[indicating an affirmative response].

Q. ----Could you explain, please, in just very general terms, what that was?

A. The EEI are the individual themes, items, topics that we learn about

Q. Sir, is it a list?

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Q. Sir, so at the beginning you talked about the information,

A.

Q. Okay, sir. How does your office receive this information?

A. That contact report is sent electronically to my office--my former office.

Q. That you were responsible for?

A. Yes.

1 Q. Did it have a section or subsection within your
2 overall office that handled these types of reports?

3 A. Yes.
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7

8 Okay?

9 Q. Sir, what was job for
10 you? What was primary responsibility and secondary?

11 A. She is responsible but because of the way the
12 office is, if you will. She is
13 responsible--she has other responsibilities other than the
14

15 Q. What do you mean by her thing is, sir?

16 A. Her responsibilities.

17 Q. Sir, was she responsible in your office to track this
18 information?

19 A. Yeah. She had two----

20 Q. What----

21 A. ----two responsibilities:
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1 Q. Sir, how did she populate this database you've
2 referenced?

3 A.

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5 Q.

6 A.

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14 Q. Okay, sir. So, what did do when she
15 received these reports?

16 A. The EEI reports? That what you are----

17 Q. I am talking about the

18 A.

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22 Q. And sir, have you ever required to pull
23 EEIs before for you?

24 A. All the time.

1 Q. Can you explain for the Court, briefly, when in your
2 normal practice as the chief of the counterespionage section you
3 would have pull these reports?

4 A. She is the one that prepares the quarterly report that
5 goes out to all the DoD customers. She prepares that report
6 based on all the data in our complete database.

7 Q. And just focused on EEIs?

8 A. That is one of her responsibilities, yes.

9 Q. And sir, when you--what were the criteria you gave her
10 when she pulled the EEI list that you have referenced?

11 A. Give me a representative sample from a couple of
12 years; go back to '08, '09, '10. I told her a window. I didn't
13 tell her She decided--she went to
14 all the different reports in that timeframe. She extracted
15 several of the EEI from some of the countries on there and
16 compiled a list for me.

17 Q. And, is that the list you relied upon that Major
18 Hurley--you just testified with Major Hurley?

19 A. Yes.

20 Q. Sir, what about the--could you explain for the Court
21 briefly what it is, the list you referred to that
22 pulled for you.

23 A. In my thinking, I know

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I

1 wanted to know because of the EEI, the

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3 in information,

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15 Q. And sir, what database did that data pull come from?

16 A. That is the same database that houses

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22 Q. And sir, have you ever asked before to

23 pull data for you from the database?

1 A. He pulls--he is responsible for the--for giving me the
2 report that goes to Congress every quarter from

3 Q. Does that report that goes to Congress every quarter,
4 that you were responsible for, include data pulls?

5 A. Yes, it does.

6 Q. What type of information is included that get gets
7 pulled?

8 A. The military services report in their reporting for
9 that quarterly report. We compile that with the information
10 that is already We will ensure
11 That is really where Congress
12 likes to focus, is

13
14 Q. And sir, is your briefing of that report relied upon
15 by our U.S. Government officials?

16 A. It is. Yes. It is----

17 Q. Who specifically relies--has relied upon your
18 expertise of using these reports?

19 A. The accuracy of that report is the USDI that actually
20 stands in front of Congress four times a year with that report
21 and briefs them.

22 Q. Sir, are you part of the DIA--well, are you aware if
23
24

1 A.

2 Q. You were, sir?

3 A. I've heard about it. I mean, I don't--I couldn't tell
4 you----

5 Q. Were you part of that

6 A. No. No.

7 Q. So sir, did you have any direct involvement in this
8 case before you were identified as a witness?

9 A. No.

10 Q. Or, specifically identified as an expert witness?

11 A. No.

12 Q. And sir, in your experience, have you ever seen a
13
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15 A. As it pertains to:
16

17 Q. Yes, sir.

18 A. Yes. I've seen that
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20 TC[MAJ FEIN]: Thank you, sir.

21 No further questions, Your Honor.

22 MJ: Any further re-cross?

23 ADC[MAJ HURLEY]: No, ma'am.
24

EXAMINATION BY THE COURT-MARTIAL

Questions by the Military Judge:

Q. Mr. Lewis, I have a few questions.

A. Yes, Your Honor.

Q. You talked about this EEI.

A. Yes, ma'am.

Q. Am I understanding your testimony correctly to be that
when the reports come
back to you----

A. Mm-hmm[indicating an affirmative response].

Q. ----these people in your office who run these
databases

A. Yes, ma'am.

Q. And so they would add in some field that said,
how does that work?

A. No, ma'am. In the way the report is written

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7 Q. Maybe I am still not understanding. I thought I heard
8 you testify that the

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10 A. Yes, ma'am. Each individual operation, they will come
11 back and we will learn what,

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20 Q. Now would you be able to tell from looking back, based
21 on your experience, from looking back into these

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1 A. We would take that as, if they are

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18 Q.

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20 A. Okay.

21 Q. If all of your

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24 A. Mm-hmm[indicating an affirmative response].

1 Q. If there is nothing in the database that addresses,
2 for example, information regarding a United Nations food
3 program, just to throw something out there.

4 A. Okay.

5 Q. Do you believe you are in some kind of a position to
6 evaluate what the

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8 A.

9 no, ma'am. I don't
10 think I could do that. We're--I can base it on what we know
11 they and the
12 result of that.

13 Q. Okay.

14 A.

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18 Q. Okay. You testified earlier that 95 percent of

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20 The espionage cases, the
21 person has been paid. Have you been involved in any
22 investigations where the person is--has basically released
23 classified information or any espionage cases where the end goal

1 was not to be paid more like you were talking about in
2 the philosophical?

3 A. Me, as a case agent, I never had a case against .
4 In my oversight roles, there were several cases against
5 that we were monitoring where we know that even as of late as
6 last year,

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10 No.

11 MJ: Any follow up questions based on that?

12 ADC[MAJ HURLEY]: Not from the defense, ma'am.

13 TC[MAJ FEIN]: No, ma'am.

14 MJ: All right. Do the parties wish oral argument on why
15 this witness should or should not be qualified as an expert in
16 the areas that the government wants to qualify?

17 ADC[MAJ HURLEY]: Ma'am, we would like to have oral
18 argument.

19 MJ: All right.

20 Why don't we excuse the witness for that portion of
21 the closed proceeding?

22 ADC[MAJ HURLEY]: Yes, ma'am.

23 [The witness was temporarily excused and exited the courtroom.]

24 MJ: All right.

1 ADC[MAJ HURLEY]: Ma'am, would it be possible to request a
2 comfort break first?

3 MJ: Yes. The government has got the burden here, so the
4 government should go first and then you should go second.

5 TC[MAJ FEIN]: Yes, ma'am.

6 MJ: Okay.

7 Anything else we need to address at this point?

8 TC[MAJ FEIN]: No, ma'am.

9 MJ: 1630?

10 ADC[MAJ HURLEY]: Sounds good, ma'am.

11 MJ: All right. Let me--before we do go on the break
12 though, I do want to talk about something. I am going to need
13 some time after oral argument to make a ruling on this.

14 Do you still want to go forward today, or do you want
15 to go forward starting tomorrow morning? I will need about an
16 hour.

17 TC[MAJ FEIN]: Ma'am, we could go tomorrow morning. I
18 mean, looking at what time it is. If the Court needs another
19 hour--ma'am, may we just talk in the recess with the defense and
20 then we will get back to you once we come back on the record.

21 MJ: All right. Why don't we go ahead and do that.

22 ADC[MAJ HURLEY]: Ma'am?

23 MJ: Yes?

1 ADC[MAJ HURLEY]: Just one thing. I know I am going to
2 reference a case, ma'am, in my argument. I printed one out for
3 you and for the government.

4 MJ: Thank you. May I have it please?

5 ADC[MAJ HURLEY]: Yes, certainly, ma'am.

6 MJ: Since we are not in recess yet, we could just announce
7 for the record what it is.

8 ADC[MAJ HURLEY]: It is *U.S. v. King*, ma'am, the cite is 35
9 MJ 337, it is a 1992 Court of Military Appeals case.

10 MJ: Once again, I am a fast reader but I am not that fast.
11 So I will need some time to read and digest the oral argument.

12 TC[MAJ FEIN]: Ma'am, the government has some cases, as
13 well, and we will get it during the recess.

14 MJ: All right. I think I know where we are going with
15 this.

16 All right, court is in recess until 1630.
17 [The court-martial recessed at 1617, 1 July 2013.]
18 [END OF PAGE]

1 [The court-martial was called to order at 1700, 1 July 2013.]

2 MJ: Court is called to order.

3 Let the record reflect all parties present when the
4 court last recessed are again present in court. This is a
5 continuation of the closed session that we held earlier today.

6 Major Fein, is there any additions we need to--or,
7 anything we need to address regarding the closed session at this
8 time?

9 TC[MAJ FEIN]: No, ma'am. This session is continuing to be
10 classified at the SECRET/NOFORN level.

11 MJ: All right. The parties have asked for oral argument
12 with respect to this motion which we will do now.

13 The Court had a brief 802 session with the parties and
14 we're going to go back on the record tomorrow at 0930, once
15 again, in a closed session. The Court will make its ruling with
16 regard to the qualifications of this expert and we'll continue
17 on, or not, in closed session following that. And, the parties
18 agreed, with the approval of the Court, that we would have a
19 public session at 11 o'clock--or on or about 11 o'clock or at
20 least that is what we'll tell the public it will be--at 11
21 o'clock tomorrow morning.

22 Anything further we need to address?

23 TC[MAJ FEIN]: Ma'am, also, the United States did ask Mr.
24 Prather to notify the public, and he did so, that we will

1 reconvene at 11 for the public session and the Public Affairs

2 Office notified the members of the media.

3 MJ: All right.

4 ADC[MAJ HURLEY]: Ma'am, if I may?

5 ACC: Yes.

6 ADC[MAJ HURLEY]: Our objection to Mr. Lewis's testimony--

7 we don't object to counterintelligence--his expertise in

8 counterintelligence, generally. We would object to that part of

9 it with respect to his experience with offensive

10 counterintelligence operations and----

11 MJ: All right, hold on just a minute. So you don't object

12 to counterintelligence expertise, generally?

13 ADC[MAJ HURLEY]: Yes, ma'am.

14 MJ: But you do object to?

15 ADC[MAJ HURLEY]: Him as an expert in offensive

16 counterintelligence operations.

17 MJ: All right.

18 ADC[MAJ HURLEY]: And we maintain our objection, in its

19 entirety, to him as an expert in

20

21 MJ: So, you're objecting to

22 that?

23 ADC[MAJ HURLEY]: Yes, ma'am.

1 MJ:

2

3 ADC[MAJ HURLEY]: Yes, ma'am.

4 MJ: All right. Are the parties ready--I noted--oh, just
5 for the record, and I did note I have received several cases
6 from the parties to consider; one from the defense, *United*
7 *States v. King*, 35 MJ 337, United States Court of Military
8 Appeals, 1992. From the government, I have received *United*
9 *States v. Hood*, 12 MJ 890, U.S. Army Court of Military Review,
10 1982; Supreme Court of the United States, *Kumho Tire v.*
11 *Carmichael*, 119 Supreme Court 1167, 1999; *U.S. v. Sims*, 514 F.2d
12 147, Ninth Circuit, 1975; *U.S. v. Harris*, Court of Appeals for
13 the Armed Forces, 1997, and that would be at 46 MJ 221; and
14 *United States v. Sanchez*, 65 MJ 145, Court of Appeals for the
15 Armed Forces, 2007.

16 Is the Government ready to argue?

17 ATC[CPT VON ELTEN]: Yes, Your Honor.

18 MJ: Okay.

19 ATC[CPT VON ELTEN]: Your Honor, Mr. Lewis has specialized
20 knowledge regarding United States government information based
21 on his 36 years of government service, and, in particular, his
22 29 years of counterintelligence experience. With regard to its
23 appropriateness, because it's specialized knowledge outside the
24 purview of an average fact-finder, it should be--it is

1 appropriate for expert qualification. In terms of determining
2 the qualifications, Your Honor, CAAF discusses the flexibility
3 of expert analysis, applying the *Daubert* and *Kumho Tire* factors
4 in *United States v. Sanchez*. In that case, they cite *Kumho*
5 *Tires'* liberal application of the *Daubert* factors, noting that
6 not every factor has to be applied and that the military judge
7 has leeway in determining what factors she chooses to apply,
8 saying that the same level of intellectual rigor characterizes
9 the practice of an expert in the relevant field is the test.
10 And, in this case, Mr. Lewis has discussed, in-depth, his
11 experience with counterintelligence operations and
12 investigations and the types of information involved therein.
13 Furthermore, Mr. Lewis has testified he's one of the most--10-
14 most knowledgeable DoD counterintelligence professionals in
15 using the techniques employed by others similarly situated.

16 MJ: Let me just interrupt you there. The defense has
17 objected--has not objected to the expertise in
18 counterintelligence and his expertise, generally, so let's focus
19 on offensive counterintelligence.

20 ATC[CPT VON ELTEN]: Yes, ma'am.

21 MJ: I assume the defense objection is because he hasn't
22 personally done the investigations, himself, and is involved in
23 an oversight role?

24 ADC[MAJ HURLEY]: Yes, ma'am.

1 ATC[CPT VON ELTEN]: Well, ma'am, then I would point out
2 that, under *United States v. Sims*, if the information is the
3 type reasonably relied upon by an expert, then it's appropriate
4 for an expert to testify--to use that information as the basis
5 for his opinion. The rationale in favor of the admissibility of
6 expert testimony based on hearsay is that the expert is capable
7 of determining and assessing the reliability of the information
8 from which he bases his opinion. Furthermore, in *United States*
9 *v. Sanchez*, the Court of Appeals for the Armed Forces noted that
10 "trained experts regularly extrapolate from already existing
11 data" which is what Mr. Lewis has testified about and will
12 testify going forward that the

13
14
15 ; also, the specific information--types of
16 information involved in those operations with the various

17
18 The-----

19 MJ: Let me ask you something. Government, I'm still a
20 little confused on your focus on his value--you want him as an
21 expert on valuation of U.S. info to foreign intelligence
22 service; that's a broad expertise. What, exactly, are you going
23 to have him do if I approve this and he gets up and testifies?

1 What's he going to testify to, and about, and how is he going to
2 do it?

3 ATC[CPT VON ELTEN]: Your Honor, Mr. Lewis will testify
4 that, based on his experience and knowledge of counter-offensive
5 investigations, that a

6 So, for instance, he will testify
7 that

8 in the and that--he
9 will then say, having reviewed certain documents that he found
10 the

11
12 MJ: How many countries is he going to talk about?

13 ATC[CPT VON ELTEN]: I believe he will talk about, in
14 particular,

15 MJ: So are the--so his expertise, then, can be confined to
16 , right?

17 ATC[CPT VON ELTEN]: Yes, ma'am. He will also will--he's
18 also talked a little bit but that's not relevant to
19 his valuation.

20 MJ: That's my--my point is: what does the government want
21 from this witness? I mean, this valuation of information--

22 ATC[CPT VON ELTEN]: The government wants to offer Mr.
23 Lewis to say that or
24 intelligence service would want this type of information. So,

1 for instance, for CIDNE-I and CIDNE-A, Mr. Lewis will talk about

2
3 For information in the Net Centric Diplomacy database,
4 he would talk about

5
6
7 For GTMO, I believe Mr. Lewis will talk about

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12 And, for the GAL, for instance, he will talk about

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16
17 MJ:
18 ATC[CPT VON ELTEN]:

19
20 MJ: What's NCD?

21 ATC[CPT VON ELTEN]: Sorry, Net Centric Diplomacy database.

22 MJ: All right. Does the government intend to go beyond
23 those three countries with this witness?

24 ATC[CPT VON ELTEN]: No, ma'am.

1 MJ: Proceed.

2 ATC[CPT VON ELTEN]: And, furthermore, ma'am, under
3 *Daubert*, not applying all factors, but the information relied
4 upon by Mr. Lewis is reliable; the United States government
5 relies on it. Mr. Lewis briefs senior officials on that
6 information. He also briefs Congress on that information. That
7 is also similar to the fifth factor in the *Hauser* analysis.
8 This, also, is related to the fourth *Daubert* factor of general
9 acceptance within the relevant community, being the
10 counterintelligence community involved in
11 operations.

12 Also, ma'am, the--in *Hood*, the valuation of black-
13 market goods has been accepted and military jurisprudence.
14 Similarly, in *Harris*, documents--to address the defense's case,
15 also, ma'am, in *King*, the Court of Military Appeals said that
16 we--that a proper foundation was needed for the specific
17 information. In this case, Mr. Lewis has testified to

18
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20 --that they have--that the foreign intelligence services
21 have given to these documents. In this case, Mr. Lewis relies
22 on reports, budgets, financial statements, the classification of
23 the documents, his training and education, and experience, in

1 addition to the verification of the

2

3 Therefore, ma'am, because the United States government
4 indicates that this is reliable information and it's beyond the
5 purview of an average fact-finder, it's appropriate for expert
6 testimony and the United States government believes we have laid
7 a proper foundation for the specific information and the basis--
8 the specific information on which Mr. Lewis will rely--the basis
9 of that.

10 Finally, ma'am, *Harris* also stands for the proposition
11 that, with a proper foundation, hearsay or other information
12 relied upon by an expert is appropriate basis for expert
13 testimony--opinion testimony, in particular, pointing to 403's--
14 the analysis for that.

15 MJ: All right.

16 Major Hurley?

17 ADC[MAJ HURLEY]: Ma'am, at the outset, do you have any
18 questions that you would like to ask?

19 MJ: Not at this point. Go ahead.

20 ADC[MAJ HURLEY]: Ma'am, today, this--tomorrow would be the
21 day--the first day that Mr. Lewis has offered an opinion
22 regarding the valuation of a classified document--that he--that
23 this is not something that he is ordinarily--that he has not
24 ordinarily, has ever done before; that he's never said, "This

1 document is worth this." And it's the position of the defense,
2 ma'am, that if you look at M.R.E. 702, as I know that you will,
3 that it's not based--the expert testimony is not based on
4 sufficient facts or data. Ma'am--and let me stop right there
5 and put a pin in it.

6 A concept that we're all familiar with, as experienced
7 military justice professionals, is the CID file. And what Mr.
8 Lewis talked about was--what he's relying on isn't the entirety
9 of the file--what you are--what anyone who has seen a CID file
10 would call the entirety of the file--he's just relying on the
11 agent investigative reports; the communiqué from the agent back
12 to say, "This is what's going on," that's it. Not all of the
13 interaction, not data,

14 that could inform this information,
15 just what the agent is saying back to HQ about what is going in
16 this particular offensive counterintelligence operation.

17 MJ: But doesn't what the government talked about--I mean,
18 if these reports--this is the data they're using to brief
19 Congress, they're using to--in all of their briefings and
20 reports to government officials, doesn't that say something
21 about its reliability?

22 ADC[MAJ HURLEY]: Well, ma'am, it certainly does say
23 something about its reliability, but not only is he just talking
24 about that--he's talking about--I recognize it does say

1 something with respect to its reliability and something positive
2 with respect to that. But, he's talking about his memory of
3 those things, so it's not just the report, itself, but it's also
4 filtered through the brain-housing group of Mr. Lewis.

5 And not only is it filtered through the brain--just
6 those things filtered through, it's also the data call that he
7 asked for. January of 2013, knows he's going to have to be a
8 witness, so he tasks "Ma'am, would you do a data
9 call for me? What I'm looking for is"--the testimony that I
10 understood from--or the defense understood, ma'am, was from 2008
11 and 2009--"I'm looking for portions of the EEI that correspond
12 to these time groups." And, once he gets closer in time to
13 trial, he realizes that--or he realizes that he needs yet more
14 information, so he tasks, as he can, to say, "Give
15 me the most successful counterintelligence operations ever--

16 " and then he also says, "And give me the least
17 successful and by least successful what I mean is the
18 counterintelligence for which we

19 not the ones that totally went south and ask for a brief
20 up on those--and by "went south," ma'am, that's a euphemism for
21 did not--I think the Court understands what I said.

22 And so it's--the sufficient facts are data because
23 it's in his memory and it's--the testimony isn't the product of
24 reliable principle and methods. He's applying his memory to the

1 information that he's given; a person who's never done this
2 before, never been called upon to do it before. That's his role
3 now. "Here you go, Mr. Lewis. How are we going to value this
4 information and get the information to the trier of fact that,
5 in this case, she needs to make the important decisions that she
6 has to make in this case?"

7 MJ: What is--would--is the defense's issues with--if this
8 witness goes back and says, "Okay, looking through my database,

9
10 information about let's put it that way--about
11 situations or

12 " therefore drawing the

13 I mean, what's--I guess--what's
14 the defense's issues with that? Or are you saying your issue is
15 because they

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18 ADC[MAJ HURLEY]: Ma'am, I apologize. Could you please
19 restate your question?

20 MJ: Okay.

21 ADC[MAJ HURLEY]: I didn't follow.

22 MJ: Where I'm looking at this is, if there is a database
23 that is maintained by the entity that Mr. Lewis supervises and
24 it says, "Okay, here, we've got--one of our fields is the

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3 ADC[MAJ HURLEY]: All right.
4 MJ: "And then next time,
5
6 and, by virtue of that, through his experience, he's concluded,
7 "Okay,
8 Therefore, if they were interested in 2010, they're interested
9 in 2013. Back then, ,
10 . " I guess--
11 where--what is the defense's--based on his experience and his--
12 this database that's maintained, what is the defense's
13 objections to those kinds of questions in value?
14 ADC[MAJ HURLEY]: Well, ma'am, here is the way I would do
15 it--and for--as an appellate exhibit, we could mark the EEI to
16 better illustrate the point that I'm making.
17 MJ: That would be helpful.
18 ADC[MAJ HURLEY]: All right. Yes, ma'am.
19 TC[MAJ FEIN]: Ma'am?
20 MJ: From the government, yeah?
21 TC[MAJ FEIN]: Before that happens, Your Honor, the United
22 States will have to check with the equity holder. That was not
23 originally asked, it was just about disclosure and discovery.
24 MJ: Well, how long is that going to take?

1 TC[MAJ FEIN]: Hopefully, we can get approval tomorrow
2 morning, ma'am. I mean, it's already 1700, so I doubt we can
3 get a--unless we take a brief recess and try and give them a
4 call.

5 MJ: Okay. Why don't we go ahead and make oral argument
6 and then make your phone calls?

7 TC[MAJ FEIN]: Yes, ma'am.

8 ADC[MAJ HURLEY]: Major Fein--or if I just may pose a
9 question----

10 MJ: Yes.

11 ADC[MAJ HURLEY]: ----to someone who may answer, if I
12 summarize the EEI or my read of the EEI, would that--is that an
13 appropriate use of the information or not?

14 TC[MAJ FEIN]: Ma'am, I don't think there is any objection
15 if it's summarized, it's just putting it in the record for all
16 time.

17 MJ: That's fine.

18 ADC[MAJ HURLEY]: So, ma'am--and, again, let's--what
19 happens, as I understand it, in these offensive
20 counterintelligence operations is they

21
22
23 right? And what they do to identify what this information is--
24 the EEI doesn't say, "A memo from Colonel Denise Lind to Major

1 Tom Hurley, marked SECRET/NOFORN that indicates"--I forget what
2 the example was, ma'am, but let's just----

3 MJ: I used two of them.

4
5 So, either--they would be the same analysis for both.

6 ADC[MAJ HURLEY]: So, from Colonel Lind to Major Hurley,
7 whatever, and

8 What it does is it just summarizes it,
9 generally. So, we're counting on the person that's summarizing
10 it, a faithful public servant of the United States, to be sure,
11 but we're counting on that person to get it right. And that's
12 what Mr. Lewis is relying on. So he's comparing this--the
13 information in the EEI that's not a specific description of the
14 information, but just generalized--a generalized notion of it
15 and then he's using that information to apply to the second bit
16 of the--second bit of data which is the cost. So, it's this--
17 and because--and we're going to go with , ma'am, if that's
18 okay with the court?

19 MJ: That's fine.

20 ADC[MAJ HURLEY]:

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1 That's, I guess--is the position of the defense
2 clear as to why we believe that be problematic?

3 MJ: I'm not sure. I guess I'm--if his expertise is
4 contained at the, "All right, here are the databases we
5 maintain, we are--I supervise all of these offensive operations
6 and, in the past,

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11 ADC[MAJ HURLEY]: Well, ma'am, may I have a moment to
12 respond to that question?

13 MJ: Yes.

14 [The defense counsel conferred.]

15 ADC[MAJ HURLEY]: Ma'am, would you--and I apologize to ask
16 the Court to do this, but would you restate your position--or
17 the last question that you asked me when I asked for a moment to
18 answer?

19 MJ: No, I guess--I mean, I'm seeing a variety of different
20 levels, here. The government, as I understand what they want to
21 do, is they want to use Mr. Lewis--have Mr. Lewis qualified as
22 an expert, to be able to go back and say,

23

24

1
2 about
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4 And the government would then ask the
5 opinion, "Well, all right, now you've gone to the CIDNE-Iraq
6 database, you've plugged in your keywords, you've found certain
7 information in the CIDNE database and that
8

9 Therefore, my evaluation is, because
10
11
12

13 Before I continue my question, Government, is that
14 what you want to do?

15 TC[MAJ FEIN]: Essentially, yes, ma'am.

16 MJ: Okay. So I have two things: one is your objection to
17 having all of that, which I think you were arguing to me before,
18 and, say, the Court was to rule, "Okay, that final opinion of,
19
20
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22 ADC[MAJ HURLEY]: Indexed for inflation or whatever.

23 MJ: Yes. So, assume that last step is taken out and his
24 expertise is confined to, "In the past, this is the type of

1 information, based on my experience with these investigations
2 that these particular foreign intelligence entities
3 I've put keywords into the compromised documents
4 and found information that is

5
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7 ADC[MAJ HURLEY]: Yes, ma'am. Our problem with that--the
8 primary problem would be it's not that Mr. Lewis looked at the--
9 that he's going document for document, he's going summary for,
10 at this point, now that he's reviewed the--in this--and, ma'am,
11 my right hand indicates the charged documents, here.

12 MJ: Okay.

13 ADC[MAJ HURLEY]: He's going for the charged documents that
14 he has seen with what, in the EEI, was a summary and what, in
15 his--and even when he reviewed the actual records--when, in his
16 oversight capacity, ma'am, he went into the database and was
17 reading those agent investigative reports, he was just reading
18 what the agent was sending back.

19
20
21 Is that----

22 MJ: Yeah, no, I'm looking--I'm just--you know, this case,
23 this is really turning on Military Rule of Evidence 703, an
24 opinion may--an expert may base an opinion on facts or data in

1 the case that the expert has been made aware of or personally
2 observed if experts in the particular field would reasonably
3 rely on those kinds of facts or data in forming an opinion on
4 the subject and they need not be admissible. So that's where--I
5 mean, I'm throwing my questions out to you--that's what I'm
6 wrestling with. If this is the data used to brief Congress,
7 then----

8 ADC[MAJ HURLEY]: Yes, ma'am.

9 MJ: ----why is it unreliable here?

10 ADC[MAJ HURLEY]: Certainly--well, ma'am, obviously, what
11 we're talking--not to say that briefing the information to
12 Congress requires any less candor, but obviously----

13 MJ: But, I mean, he's reasonably relying on it.

14 ADC[MAJ HURLEY]: Yes, ma'am, this particular expert. You
15 know, going back to the language in 703, if experts in the
16 field--what---question I asked him in open session was, "We're
17 looking to qualify you as an expert. Do you know anyone else
18 that holds them self out as an expert in this field?" And the
19 answer to that question was, "No." So it's not as though there
20 is this cadre of people to look at to say, as we would with
21 orthopedic surgeons or auto accident reenactments or pick an
22 expert, ma'am, that you have seen time and again that's come
23 into one of your courts, this is different. This is a novel
24 expert providing what, for him, would be the first-time opinion

1 with respect to this information. So that's what would be the
2 position of the defense.

3 MJ: Okay.

4 ADC[MAJ HURLEY]: And, ma'am, we would--ma'am, if I could
5 just take a look at one of these cases that the government has
6 given? I believe it's the *Hood* case, with respect to the black
7 market in Korea. I just want to make sure I get the case right.
8 Yes, ma'am, it's 12 MJ 890.

9 MJ: Mm-hmm[indicating an affirmative response].

10 ADC[MAJ HURLEY]: And, I guess that's one point that we
11 would compare this situation to another. In this situation, the
12 expert that testified, who was a CID agent, came and testified
13 and said, "I've been in Korea for 5 years. I have participated
14 in scores of these types of investigations as the principle
15 myself and I have seen sophisticated statistical analysis about
16 the black markets and how they work in Korea. And, based on all
17 of that, here's my opinion." And, ultimately, that opinion was
18 vindicated by the higher Courts that existed at the time.

19 Ma'am, let's notice the differences. First, you're
20 talking about an agent that was, himself, I am supposing, hip-
21 deep in these sorts of investigations, personally, doing them,
22 himself, on the ground. The second piece of that problem is, as
23 he is looking through there, he is going--he is vetting this
24 information--one supposes, just based on our common sense and

1 knowledge of ways of the world--through a series of black market
2 operations that existed on the Korean peninsula.

3 So it wasn't just this made up thieves market that Mr.
4 Lewis will talk about--because it's made up and it's a
5 fabrication to a degree--because the agents have to say to
6 themselves--talking about the facts of this case now--the agents
7 have to say to themselves, "What do we-

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Not

16 like in *Hood*, he was able to look at all--he was--this
17 individual was able to look at the various black markets and be
18 privy to statistical analysis based on those actual markets of
19 things getting bought and sold which Mr. Lewis has no idea
20 about. "I have no idea if there's a thieves market," Mr. Lewis
21 said. "Major Hurley, you are the person that introduced those
22 words to me."

23 So he isn't able to say that and it's that sort of--if
24 Mr. Lewis's testimony was based--was similar to

1 and I'm just pulling from page two, ma'am, I don't know where it
2 is in the actual MJ. is pulling this information
3 from all of this data where

4
5 And that's the
6 position of the defense that says this information, whether you
7 look at M.R.E. 703, ma'am, or you look at M.R.E. 702, it fails.
8 And, as the military judge, the defense would request that you
9 not--that you disallow this evidence from being admitted into
10 this Court.

11 Ma'am, just one moment.
12 [pause]

13 And, ma'am, we're talking--you're--you'd mentioned to
14 me before--This is my last statement. You had mentioned to me
15 before that he briefs Congress and as--at the defense table, as
16 we were reflecting on what Mr. Lewis said--he's briefing
17 Congress on what was spent and not the actual intelligence that
18 went forward. So, he's not giving the Congress a rundown of
19 that actual intelligence, just, "Hey, Congress, because this is
20 one of your big functions to conduct oversight as to how we're
21 spending money, this is how we're doing it in these particular
22 cases."

23 Ma'am, that's it, thank you.

24 MJ: All right. Thank you.

1 Government, any final words?

2 ATC[CPT VON ELTEN]: Yes, ma'am. A moment, Your Honor?

3 MJ: Okay. Government, now, I'm going to ask you before

4 you start, I went through with the defense counsel, basically, a

5 scenario of, "Okay, you're going to ask the witness what he's

6 got in his databases," and I believe it was the keyword searches

7 and what was compromised then come up with an opinion, but I

8 want the government just to lay out, for me, exactly how you

9 plan to do this.

10 ATC[CPT VON ELTEN]: Well, Your Honor, the government's

11 plan would be to have Mr. Lewis first talk about--well, he's

12 already talked about his experience so it would then be to say,

13 "In my experience, based on these counter-offensive operations

14 over which I've had visibility, I know that

15 for instance." Then he will say, "I have

16 reviewed documents contained in the CIDNE-I database that

17 I reviewed the documents. I found

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24 MJ: And his opinion would be based on what?

1 ATC[CPT VON ELTEN]: His opinion would be based on the

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4 MJ: So, his opinion--So, that basically is the foundation
5 of his opinion. His opinion that

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8 ATC[CPT VON ELTEN]: Yes, ma'am.

9 MJ: So why should I let him go beyond, "Here's what
10 they've "?

11 ATC[CPT VON ELTEN]: Your--ma'am, it's that extra
12 inferential step from his expertise that this is similar--
13 essentially, Your Honor, he would be testifying that the
14 information is similar and, because of that, he can assess the
15 value.

16 MJ: How many other--he's never testified as an expert
17 witness, according to his own statement, ever. He's never been
18 qualified as an expert witness----

19 ATC[CPT VON ELTEN]: Yes, ma'am.

20 MJ: ----so why should I be the first?

21 ATC[CPT VON ELTEN]: He's never been asked to provide his
22 specialized knowledge before for-----

23 MJ: To your knowledge, has this kind of specialized
24 expertise ever been in a courtroom before?

1 ATC[CPT VON ELTEN]: One second, ma'am.
2 [The trial counsel conferred]
3 ATC[CPT VON ELTEN]: Your Honor, I would make two points to
4 that. First, as Mr. Lewis testified, he's one of a very small
5 number of people with this type of specialized knowledge. Two,
6 to the United States' knowledge, in the--I'm going to miss the
7 name but--*Truoung Hong* case in the Fourth Circuit, in the 1970s,
8 an FBI agent testified to the value of the information in that
9 case.
10 MJ: Based on what?
11 ATC[CPT VON ELTEN]: Based on his experience.
12 MJ: And----
13 ATC[CPT VON ELTEN]: Your Honor, the----
14 MJ: ----You gave me a number of cases, *Truoung Hong*, is
15 not one of them.
16 ATC[CPT VON ELTEN]: Yes, ma'am.
17 MJ: It would seem to be that--if that is the most closely-
18 -directly on point, the government might want to consider that.
19 ATC[CPT VON ELTEN]: Yes, ma'am.
20 MJ: Go ahead.
21 ATC[CPT VON ELTEN]: I can provide that to you immediately
22 after this, ma'am. Your Honor, Mr. Lewis testified that,
23 through his general knowledge and expertise, he relies on the
24 EEI list and he selected the years 2008 to 2010 because he

1 believes those were reliable. Furthermore, he testified that he
2 produces briefs to Congress,
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7 Mr. Lewis further testified that he does not develop
8 ,
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10 That is what we
11 are asking him to testify about. Furthermore----
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13 MJ: Well, let me stop you there. His expertise is based
14 on the or the CI operations,
15 is that right?
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17 ATC[CPT VON ELTEN]: Yes, ma'am.
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19 MJ: Now, I believe he testified that,
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1 ATC[CPT VON ELTEN]: That is one potential basis for the
2 information, but also for the types of information; that's where
3 Mr. Lewis' expertise talking about the classification, the types
4 of information, and taking a broad view of the
5 can cull the data and present the relevant
6 factors based on his expertise.

7 MJ: Okay.

8 ATC[CPT VON ELTEN]: And, furthermore, Your Honor,
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15 MJ: Well, let me ask you something: on cross-examination,
16 to the defense, Mr. Lewis said, "Well, I didn't look at any of
17 the EEIs regarding
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22 ATC[CPT VON ELTEN]: Again, Your Honor this goes to Mr.
23 Lewis' expertise of knowing that--or being able to--first of
24 all, the defense may cross-examine that and elicit those facts,

1 but this is--goes to Mr.--second, it goes to Mr. Lewis'
2 expertise about, "

3
4 or some other failure that was not related to the operation."

5 MJ: But he can't even testified, at this point, that there
6 is been any failures with respect to the

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9 ATC[CPT VON ELTEN]: Say again, Your Honor?

10 MJ: Well, as I understand what the government is seeking
11 to elicit, "All right, I went back and looked at the EEIs that
12 Ms."--what's her name?

pulled and I
13 only pulled the ones of successful counterintelligence

14 operations and they revealed that there are certain

15 Now, I look at your
16 charged information and I found similar types of

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23 ATC[CPT VON ELTEN]: Your Honor, again, he testified that
24 those missions failed for all sorts of reasons. Second, that

1 would be proving a negative--

2 -----

3 MJ: Well, okay. I mean, let's do something very simple.
4 I like pizza. So, on Monday, I paid \$10 for pizza. So an
5 expert is going to come in and say, "Colonel Lind--Judge Lind
6 likes pizza so she paid \$10 on Monday so I've got to charge \$10
7 for a stolen pizza on Friday, so Judge Lind would evaluate that
8 pizza at \$10."

9 ATC[CPT VON ELTEN]: Yes, ma'am.

10 MJ: If, on Tuesday, I was presented with the opportunity
11 to eat a pizza and I decided I don't want a pizza and I'm not
12 paying \$10 for that pizza, how reliable is that opinion, on
13 Friday, that if offered a pizza, I'm going to pay \$10?

14 ATC[CPT VON ELTEN]: It's reliable, ma'am, because the
15 value is set at a specific time. To go with your pizza analogy,
16 ma'am, the price is set when somebody will engage in that--when
17 both sides agree to engage in the transaction. In your example,
18 if, on Tuesday, somebody doesn't order a pizza, it doesn't mean
19 the pizza doesn't have value, it just means that that person
20 doesn't----

21 MJ: No, if somebody offers me a pizza and I don't want to
22 and I refuse to pay \$10 for it.

23 ATC[CPT VON ELTEN]: But, if somebody else will offer to
24 pay \$10 for it, then it has the \$10 value and it had \$10 of

1 value the day before which makes it likely that it still has \$10
2 of value.

3 MJ: You're using----

4 ATC[CPT VON ELTEN]: But, the market is not----

5 MJ: ----this expert to say,
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15 ATC[CPT VON ELTEN]: Yes, ma'am. He testified that they--
16 that the value of money is appropriate--or takes place in about
17

18 MJ:

19 ATC[CPT VON ELTEN]: Of But the
20 go into that price, ma'am. So, for instance,
21 in the pizza price example, they don't expect to sell infinite
22 number of pizzas at \$10, they expect to sell a fixed number of
23 pizzas. So, in this case, it doesn't make the pizza worth \$10--
24 or, you know, \$20 because somebody might pay \$20 for it and then

1 somebody might pay \$5, but the pizza price--the pizza maker sets
2 the price expecting to sell a set number, not an infinite number
3 and proving the negative goes to an infinite number of
4 transactions.

5 MJ: Okay.

6 ATC[CPT VON ELTEN]: Well, Your Honor, the reports Mr.
7 Lewis relied on are exactly the types relied upon by
8 professional counterintelligence professionals[sic] in his
9 field, they're generated in the regular course of business
10 activities. It's the job of the counterintelligence
11 professionals to budget, to report, to gather financial
12 statements, to rely on training,

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16 are inextricably linked with
17 counterintelligence. The defense's concerns regarding memory
18 are no different than a doctor relying on 30 years of
19 experience. Memory and experience are part of the foundation of
20 Mr. Lewis's expertise.

21 Finally, defense concerns are more appropriate for
22 cross-examination and the weight of Mr. Lewis's testimony. The
23 defense is also welcome to present its own expert to offer a
24 contrary opinion.

1 MJ: Well, let me ask the government a question, again. On
2 the testimony of Mr. Lewis--I want to make sure I understand it
3 and that's what the government's position is going to be--that
4 Mr. Lewis came in and said, "You know, we're involved in a whole
5 host of counterintelligence operations here--counter-offensive
6 intelligence operations, here. I pulled a data set of only the
7

8 So I've got some hits
9

10 So how does that affect the
11 reliability of this opinion? "I don't know because I didn't
12 look."

13 ATC[CPT VON ELTEN]: Your Honor, your point goes to other
14 potential information that may exist and----

15 MJ: It does exist. He didn't look at it.

16 ATC[CPT VON ELTEN]: He relied upon his--the totality of
17 experience and expertise and he did look at the successful
18 transactions. The transactions that

19 those are-----

20 MJ: Wait a minute. Am I misunderstanding his testimony?
21 He didn't look at the transactions that were
22
23

1 ATC[CPT VON ELTEN]: Your Honor, that's what I meant; where
2 those transactions do not occur. That affects--that,
3 ultimately, is part of the price of the
4 So, to go back to the pizza example, someone might pay \$20,
5 somebody might pay \$5----

6 MJ: We're talking--no, no, we're talking about the same
7 entity.

8 ATC[CPT VON ELTEN]: Yes, the same entity--the same pizza
9 seller.

10 MJ: It's the buyer we're focused on.

11 ATC[CPT VON ELTEN]: Okay. All right, same buyer. The
12 buyer only relies on his personal value and it fluctuates; it
13 can change. And so, the value of something, in a market place,
14 including a thieves market, goes up and down based on a variety
15 of factors. There----

16 MJ: So how is this witness's opinion reliable if that's
17 the case?

18 ATC[CPT VON ELTEN]: It's not the United States' position
19 that there is a perfect price that's determinable. It's our
20 position that the expertise offered by Mr. Lewis is based on a
21 lot of experience and a lot of

22 and that those are evidence to the value of
23 this information. It's reliable because the United States
24 government and counterintelligence professionals rely on this

1 information. Congress relies on this information deciding
2 whether or not it is worth continuing the funds. Congress will
3 look at it and say, "We got--we're getting these results back
4 from it, so we will continue to fund it at these levels."

5 MJ: Well, wouldn't Congress--wasn't part of the briefing
6 on what the amount is spent on? So, wouldn't that include the
7 negative--the transactions

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11 ATC[CPT VON ELTEN]: Yes, ma'am.

12 ATC[MAJ FEIN]: Your Honor, may the United States have a
13 moment?

14 MJ: Yes.

15 [The trial counsel conferred]

16 ATC[CPT VON ELTEN]: One more second, Your Honor.

17 MJ: Do you want to take a 10-minute recess?

18 TC[MAJ FEIN]: Actually, ma'am, if you don't mind, may I
19 take over for Captain von Elten? I'd asked him to do this
20 without much prep only because I just can't stand.

21 MJ: Because you can't stand?

22 TC[MAJ FEIN]: Well, my back, ma'am, and----

23 MJ: Then why don't you sit down and do your argument?

24 TC[MAJ FEIN]: Yes, ma'am.

1 MJ: And, for the record, counsel on both sides, you know,
2 if there's medical issues and things we need to--please let me
3 know that.

4 TC[MAJ FEIN]: Yes, ma'am. Thank you. Just--ma'am, to
5 answer this one question, just because I--this is what was asked
6 of Mr. Lewis. When he was asked what the EEI list was, he said
7 that it was a list that was generated based off of completed
8 missions to know what the enemy--excuse me, foreign intelligence
9 services are looking for and trying to obtain. So the--going
10 back to what Captain Von Elten just briefed a few minutes ago,
11 the EEI list informs Mr. Lewis, as he testified, on what the
12 foreign intelligence services are looking for then the second
13 list informs him that,

14 So, going to
15 the Court's question about if there was an unsuccessful mission,
16 would it be annotated? No, Your Honor, because an unsuccessful
17 mission means information wouldn't have been--made it on to the
18 EEI list. It is only based off a completed mission does the

19
20 And, once they have that
21 information, they now create the database, they share it across
22 the U.S. government, they brief it up, they share it down, and
23 then they use that, then they
24 is what he testified about,

1 And it's at--he didn't say this part, Your Honor,
2 but it's clear that it's a circular process. But, if it's an
3 unfounded or unsuccessful mission, you would never have an EEI
4 which is also what he said when we asked--the United States
5 asked him something to the effect of, Your Honor,

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10 MJ: Did anyone ask Mr. Lewis if there was some kind of
11 list or database or something of unsuccessful transactions?

12 TC[MAJ FEIN]: We have not asked Mr. Lewis that question,
13 ma'am, but we can ask him--recall him to ask him.

14 MJ: Is he here?

15 TC[MAJ FEIN]: He is here, ma'am.

16 MJ: Please recall him.

17 TC[MAJ FEIN]: Ma'am, the United States recalls Mr. Danny
18 Lewis.

19 [END OF PAGE]

1 DANIEL LEWIS, civilian, was recalled as a witness for the
2 prosecution, was reminded of his oath, and testified as follows:

3 DIRECT EXAMINATION

4 Questions by the trial counsel[MAJ FEIN]:

5 Q. Sir, I'm going to ask you a few questions in reference
6 to the EEI

7
8 A. Okay.

9 Q. First, does the database that this information is
10 pulled from--does that database contain information in relation
11 to

12 A. Yes.

13 Q. And does--for those
14 does it keep track of

15
16 A. I'm sorry--you initially said from the EEI list. Are
17 we talking EEI----

18 Q. Oh, I'm sorry, sir.

19 A. ----or operations?

20 Q. Let's take both, sir, so first for the EEI list.

21 A. All right. If we got any EEI,
22 then the EEI went in there. But, if it
23 fails from the start, then there would be no EEI so there would
24 be no EEI part of failed operations all the time.

1 Q. Okay, sir. Now, what about the list created by Mr.---

2 -

3 A.

4 Q. for you--the--with

5
6 MJ: And what is that list and where does it come from?

7 WIT: Your Honor, all the--if they searched through the

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14 MJ: All right. And I don't mean to interrupt you, but I
15 do want to follow up with one question. Would those include
16 failed operations where

17 WIT: In the database, yes, ma'am.

18 MJ: In pull of the----

19 WIT: I did not ask for--I asked for

20
21 I
22 didn't ask him for a list of unproductive or failed operations,
23 ma'am.

24 MJ: Okay. Proceed.

1 [Examination of the witness continued.]

2 Q. And, sir, to go off the Court's question, just now,
3 does that database contain information on unproductive or failed
4 operations?

5 A. Yes.

6 Q. And could you please define what unproductive and then
7 define failed operations are?

8 A. A failed operation would be through
9 the process of

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17 Q. So, sir, I--so that's a failed operation?

18 A. That would be a failed, yes.

19 Q.

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21 A. Not if it fails at But from an

22 asterisk--the fact that that

23

24

1 back and figure out why. So we actually would benefit--maybe

2 So, even by

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6 Q. And, sir, what about the second type of----

7 A. Right.

8 Q. ----an incomplete mission or----

9 A. There's just times that, for whatever reason, when--

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22 Q. And, sir, why did you choose that criteria to give

23 when you asked him to do the data pull for you to look

24 at?

1 Q. All right. So, let's say--we're going to call this
2 "Time 1." At--on Time 1,
3
4 A. Okay.
5 Q. Gotcha[sic]--or are you with me so far?
6 A. I got that.
7 Q. Thanks.
8 A. I'm with you.
9 Q. Thank you so much. At Time 2----
10 A. Okay. Meeting--can we call Would that
11 help?
12 Q. Yeah, you know what, we can.
13 A. Okay.
14 Q. It absolutely will. At
15 A. Okay.
16 Q.
17
18
19
20 A. I'll go with your scenario.
21 Q. Okay. Thank you. A
22
23
24 A. Okay.

1 Q. ----from
2 , right?
3 A. Yes.
4 Q. All right. So,
5 --
6 A. No, I'm sorry, that would not get you on an EEI.
7 Q. It wouldn't?
8 A. That would get you on the
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13 Q. Right.
14 A.
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1 Q. To ask
2 A. Yes.
3 Q. That's when the EEI would come? In that better
4 amount?
5 A. Yeah, the EEI is their request for information.
6 Q. Okay. Well, just--let's stick with my hypothetical
7 scenario for just one second.
8 A. Okay.
9 Q. All right. So, at
10 A. Okay.
11 Q. ----the
12 A. Okay.
13 MJ: ----
14
15 A. Is this the
16 Q. No,
17 A. Different operation?
18 Q. Different operations,
19 A. Okay.
20 Q. And in this hypothetical scenario for
21 A. Okay.
22 Q. ----that person
23

1 Q. You certainly didn't ask to pull unsuccessful
2 counterintelligence operations, did you?

3 A. No, I did not.
4 probably, so I wouldn't
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6

7 Q. Right.
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9 A. Not on the information that I had pulled for my value
10 because, again, if we
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20 Q. Right. And that wouldn't have been what
21 pulled for you? He didn't pull the zero?

22 A. No.

23 ADC[MAJ HURLEY]: Thanks.

24 MJ: Direct?

1 TC[MAJ FEIN]: Yes, ma'am.

2 REDIRECT EXAMINATION

3 Questions by the trial counsel[MAJ FEIN]:

4 Q. Sir, what percentage of the investigations that you
5 oversaw while you were the Chief of the Counter-Espionage
6 section of DIA involved

7
8 A. Probably a couple of ops where we're talking
9 about--we're now talking about investigations?

10 Q. Yes, sir. So, sir, other than ,

11 ---

12 A. .

13 Q.

14

15 A. , but
16 ones that----

17 Q. Sir, is that based off--I'm sorry, sir. Please, go
18 on.

19 A. We were talking about the ones that were

20

21 Q. Or, sir, what about ones that

22 ?

23 A.

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10 Q. Okay, sir. And earlier, when Major Hurley was asking
11 you a hypothetical, you said that hypothetical wouldn't happen?

12 A. Well, I kind of misunder--yeah, the--within the
13 operations, part of what--one of the things that I said early
14 on, when we're looking across all the operations, if it looks
15 like multiple entities within DoD are going to start
16
17 that would be highlighted in a dialogue within the
18 the

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: does that fit the operation?

TC[MAJ FEIN]: Thank you, sir. One moment, Your Honor,
please? No further questions, Your Honor.

MJ: Anything further from the defense?

ADC[MAJ HURLEY]: No, ma'am.

EXAMINATION BY THE COURT-MARTIAL

Question by the military judge:

Q. So, Mr. Lewis, when you have these
and let's limit our focus,

A. Okay.

Q. And,

A. Yes, ma'am, and that would be considered--even though
that is--for that it helps us to
know if the
somewhere, for
whatever reason, then we, as a CI community, we have to
determine what

Is there--we look for reasons to

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Q. I guess that's where I--I'd like to ask you a--some
questions based on your expertise on CI. Now, if, say, the
--I think you brought

A. Yes, ma'am.

Q. The ----

A. Yes, ma'am.

Q. ----in January of 2008. Would there, potentially, be
a possibility that,

A. ma'am, specifically, was the--anything
that--between

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So, those are the big topics that we know from government to government they have issues with, yes, ma'am.

Q. When you did your keyword searches--and I'm assuming that's of the charged documents in this case----

A. Yes.

Q. ----how did you come up with the keywords for

A. Based on my knowledge that

1
2 --there's a
3 couple of different acronyms there. And that's how I picked,
4 when I did--I think it was the State Department database, I
5 don't remember the exact acronym for that--that was my keyword
6 search just for the State Department documents, ma'am.

7 Q. What ?

8 A. That's based on just what I know from--specifically,
9 from the EEI
10
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16 Q. So, just give me a general idea of
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20 A.
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3 Q. If you had what's the basis for your--
4 an opinion that you would make that
5 and all of
6 that?

7 A. Based on what we saw in did
8 have, when we would see we would
9 see, generally, what they were
10 So it was it's a narrow scope in that
11 theater, but that's what we had there.

12 Q. In

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14 A. Consideration that were aware of

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20 Q. Based on your expertise, what is the likelihood, if
21 any, that the

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23 A.

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Q. So, if--and this is between 2008 and 2010?

A. That was the time frame you specified, yes, ma'am.

Q. So, at that time,

A. That's what we believed was one of the explanations
based on the things that we were seeing in some of the
investigations. Some of the other

Q. What

A.

Q. What was the percentage of operations

A. Against, , ma'am? That would be in
territory that I'm--I would be guessing.

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Q. Now, what about ?

A. We've--some people would say

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7 Q. What about 2008 to 2010?

8 A.
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15 MJ: All right. Any follow-up based on that?

16 TC[MAJ FEIN]: Can we have a moment, Your Honor?

17 MJ: Yes.
18

REDIRECT EXAMINATION

19 **Questions by the trial counsel[MAJ FEIN]:**

20 Q. Sir, when there is

21 , please elaborate--but if
22 there's a successful operation,
23
24

1 A.

2

3 Q. Yes, sir.

4 A. Depending on the information, if it's about something
5 that needs

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7

8

9 Create better security education, you know,
10 make sure someone knows if they get an email out of the blue,
11 that we know," it's like they've tipped their hand. We know
12 that really want to know that. It also tells us
13 how The types of information helps us in
14 our investigations when

15

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21 Q. Sir, what--does that information go on to the EEI
22 list?

23 A. That would have been a shorter answer; yes, it does go
24 onto the EEI list.

1 Q. And how is that EEI list used other than you reviewing
2 it for your testimony, here?

3 A. The EEI list--the distribution of the EEI list is to
4 the

5
6
7
8 is aware that the

9 It goes to all the OFCO

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14 Q. And, sir, what is the, I guess, typical success rate
15 of providing information from the EEI list--is that--is the
16 success rate high, low,

17
18 MJ: Wait a minute. I don't think I understand. What is a
19 success rate? What are you asking?

20 TC[MAJ FEIN]: Yes, ma'am.

21 Q.

22
23
24

1 A. May I ask if I can clarify your question?
2 Q. Please.
3 A.
4
5
6 Q. , sir.
7 A. Yes.
8 Q. And how often, if at all,
9 A. Well if it's one of the, as the previously discussed
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17 Q.
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19 A.
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1 Q. ?
2 A. Yes. It is reported to Congress on an annual basis
3 the
4
5 Q. And sir, what was your role in that tracking of funds?
6 A. We compile that list and provide it to the USDI who
7 sends it further up.

8 TC[MAJ FEIN]: Thank you, sir.

9 No further questions, Your Honor.

10 ADC[MAJ HURLEY]: We do have some more questions, ma'am.
11 Your Honor, we do have some more questions.

12 MJ: Okay.

13 **REXCROSS-EXAMINATION**

14 **Questions by the assistant defense counsel[Major Hurley]:**

15 Q. So the government sits you down in front of a
16 computer, right? I am talking about your search of the NET-
17 CENTRIC Diplomacy database.

18 A. Okay.

19 Q. The government sits you down in front of a computer,
20 right?

21 A. Uh-huh[indicating an affirmative response].

22 Q. Pulls up a document?

23 A. No.

1 Q. Or pulls something up on the computer? Okay, well
2 let's just skip ahead.
3 A. Okay.
4 Q. You enter in your keyword searches?
5 A. Uh-huh[indicating an affirmative response]..
6 Q. Then you find responsive records?
7 A. Yes.
8 Q. Did you assess those records to see if that
9 information was already known, like already known in 2010? Did
10 you look at it and go, like, "Is this already known or did they
11 already know this or not?"
12 A. I ran the report and made sure that what was keyword
13 searched was in there; was it in the
14
15 Q. Mm-hmm[indicating an affirmative response].
16 A. And I verified that that was in there and that is as
17 far as I went.
18 Q. You didn't make that additional assessment of would
19 the
20 A. No.
21 Q.
22
23
24 A. I can't--I couldn't say that. I don't----

1 Q. That----

2 A. I don't know.

3 Q. That would be speculation?

4 A. It would be.

5

6 Q. Right.

7 A. ----all I can say.

8 Q.

9

10 A. It might have an impact.

11 Q. A negative impact

12 A. Possibly. Yes.

13 Q. Right. Now the EEI list is a generalized list, right?

14 It is one sentence.

15 A. It's----

16 Q. Let me restate that.

17 A. Yes.

18 Q. The EEI list that was pulled by for you

19 just has one sentence on what the interest is?

20 A. They are areas,

21

22 Yeah.

23 Q. Just one blurb?

24 A. It could be two. Two sentences. Yeah, but----

1 Q. Yeah, but very brief?

2 A. Yes.

3 Q. All right. So if the EEI says that, does that mean--

4 if the EEI says that--and let's just go

5

6 A.

7 Q.

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9 A.

10 .

11 Q. So would they ?

12 A. I guess it would depend on the

13

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18 Q. Right.

19 A. So we are describing

20

21 Q. Right.

22 A. Well

23

1 They are going to determine that by reviewing multiple reports
2 about the same type of incidents.

3 Q. Sure. But my questions is

4

5 A.

6 Q.

7 A.

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9 Q.

10 A.

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17 Q.

18 A.

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20 Q.

21 A.

22 Q.

1 A.

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4 Q.

5 A.

6 Q.

7 A.

8 Q.

9 So in

10 this hypothetical scenario----

11 A. Well, that was in the timeframe that she had
12 specified, as well.

13 Q. But what I am saying is,

14

15 A. Normally in

16

17 It did not happen.

18 Q. Right.

19 A.

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21 Q.

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24 A. That is very possible.

1 ADC[MAJ HURLEY]: Thanks.

2 No more questions.

3 MJ: Any last questions by the Government?

4 TC[MAJ FEIN]: Yes, ma'am.

5 **REDIRECT EXAMINATION**

6 **Questions by the trial counsel[Major Fein]:**

7 Q. Mr. Lewis, do foreign intelligence services pay for
8 U.S. Government information

9
10 A. Yes.

11 TC[MAJ FEIN]: Thank you, sir.

12 No further questions, Your Honor.

13 MJ: I still have some.

14 **EXAMINATION BY THE COURT-MARTIAL**

15 **Questions by the Military Judge:**

16 Q. Mr. Lewis, I want you to do a little searching of your
17 expertise here. You testified you've had years and years and
18 years in counterintelligence, both in investigations and
19 oversight.

20 A. Yes, ma'am.

21 Q. You've taken this information and reported to
22 Congress. Now looking at your expertise--and then again, you've
23 never been an evaluation expert or anything like that in a
24 courtroom.

1 A. No, ma'am.

2 Q. So looking at--you've told me , for example,
3 between 2008 and 2010, which is the relevant period at issue
4 here.

5 A. Yes. Yes, ma'am.

6 Q.

7
8 A. Yes, ma'am. But I believe that I was--when I said
9 that, we were talking about the

10

11 Q. Yes.

12 A.

13

14

15

16 Q. Seeking the same type of information in the

17

18 A. No. No, ma'am. That is a different set of
19 information, not in that.

20 Q. Targeting that particular set of information----

21 A. Yes, ma'am.

22 Q. Were most of the--when you

23 how did you learn that?

1 A. Yes, ma'am. Well that was having visibility on the
2 Those are fairly significant. Most of the-
3 -and to slightly clarify, the were
4
5
6
7
8

9 They don't get the same numbers. They don't get the
10
11
12

13 We were
14

15 People were willing to report to us----

16 Q. Yeah. I am not trying to suggest that your operation
17 wasn't a success.

18 A. Okay.

19 Q. No. I am looking at, you were comparing the value of
20 information----

21 A. Yes, ma'am.

22 Q. ----from the 5 percent----

23 A. Yes, ma'am.

1 Q.

2

3

4 A. Yeah.

5 Q. ----I think I can say that

6

7 A. Yes, ma'am.

8 Q. Do you believe you can do that?

9 A. I probably boxed myself in

10

11

12

I

13 that is the number that popped in my head and I know it is

14 important. But I don't---

15 Q. Do you feel--if you were walking into Congress

16 tomorrow and you were conducting a briefing or you were briefing

17 your superiors.

18 A. Yes, ma'am.

19 Q. Would you feel confident in saying, "Okay, based on

20

21 A. Yes, ma'am.

22 Q.

23

24 A. Yes, ma'am. Yes, ma'am.

1 Q. ----you've just described----

2 A. Yes, ma'am.

3 Q. ----based on I did a keyword search in the CIDNE-Iraq,
4 CIDNE-Afghanistan databases----

5 A. Yes, ma'am.

6 Q. ----and came up with these documents. Mr.

7 Congressman, Mr. Superior, I, in my expertise, believe that

8

9 A. Yes, ma'am.

10 Q. Would you feel comfortable saying that?

11 A. I would feel comfortable in saying that but I would

12 qualify my statement as that most of

13

14 They

15 It

16 was the where we were--had success

17 and that is where

18

19

20

21

22

23 I am very confident

24 based on my expertise and what I have seen is

1
2 It just isn't how we've
3 Since CI offensive operations look
4 at the

5
6
7 So we

8
9
10 Q. And, I am going to this over to the government in just
11 a moment. But what I am hearing you saying is that you have--
12 you believe you have a basis to have an opinion on what these
13 documents are when you did the keyword search or value, but that
14 opinion isn't from

15
16 A. That is based on the EEI. Yes, ma'am. What I know

17
18 These were

19
20 Yes, ma'am.

21 Q. That is the basis of your opinion. Not from these
22 other sources that you were talking about.

23 A. No. No. No, ma'am. No, ma'am. No, ma'am. It is
24 based on the

1 operations, the

2

3 But

4 the EEI is still what I used to base my opinion on as what we
5 knew

6 MJ: Okay.

7 Any follow up based on that?

8 TC[MAJ FEIN]: May I have a moment, Your Honor?

9 ADC[MAJ HURLEY]: Not from the defense, ma'am. I guess we
10 will wait and see.

11 [The trial counsel conferred.]

12 TC[MAJ FEIN]: No, ma'am.

13 MJ: All right. Do you want temporary or permanent
14 excusal?

15 TC[MAJ FEIN]: Temporary, ma'am.

16 MJ: All right.

17 [The witness was temporarily excused, duly warned, and exited
18 the courtroom.]

19 MJ: Any further oral argument from either side?

20 ATC[CPT VON ELTEN]: No, ma'am. But I have the case I
21 mentioned.

22 MJ: Okay. Thank you.

23 [The assistant trial counsel provided the document to the
24 Military Judge.]

1 MJ: All right. Can you point to me where in the case this
2 expert testimony is.

3 TC[MAJ FEIN]: Ma'am, may we have a moment?

4 MJ: Yes.

5 [The trial counsel conferred.]

6 TC[MAJ FEIN]: Ma'am, as we keep going through this, we
7 realized also that this should be read in conjunction with the
8 actual plaintiff's brief that was actually given to the 4th
9 Circuit, which we will have copies of for the Court to consider.

10 MJ: Okay.

11 [The trial counsel conferred.]

12 MJ: I assume it is somewhere on or after page 18?

13 ATC[CPT VON ELTEN]: Yes, ma'am, in conjunction with the
14 brief.

15 [Pause.]

16 MJ: All right.

17 ATC[CPT MORROW]: Your Honor, if my memory serves me. It
18 not here on the face of the case how the government proved it in
19 that case but it was part of the offer of proof by the
20 government. It is actually State Department information that
21 was compromised.

22 MJ: All right.

23 Well, when you have whatever it is you want me to
24 consider, let me know.

1 Any further oral argument by either side?

2 ATC[CPT VON ELTEN]: No, ma'am.

3 ADC[MAJ HURLEY]: No, ma'am.

4 MJ: All right.

5 Anything else we need to address today?

6 CDC[MAJ HURLEY]: Not from the defense, ma'am.

7 TC[MAJ FEIN]: No, ma'am. And, the United States will
8 email and print immediately after this session, both, the
9 appellate brief.

10 MJ: All right.

11 The one thing I do want to ask you. Defense has not
12 asked this, but since this came up earlier, assume I should
13 grant the government's request for expertise of this witness in
14 whole, or in part. Does the defense want to use these lists,
15 these EEIs or whatever other lists that he had prepared on
16 cross-examination?

17 ADC[MAJ HURLEY]: Yes, ma'am. We will.

18 MJ: Because you need approvals for that, right?

19 TC[MAJ FEIN]: Yes, ma'am. And that will go with the same
20 question of whether--if it is marked as an AE, ma'am, that will
21 be the same approval.

22 MJ: All right. So are we anticipating getting that
23 approval before tomorrow?

1 TC[MAJ FEIN]: Hopefully tomorrow morning, first thing,
2 ma'am.

3 MJ: Okay.

4 TC[MAJ FEIN]: This morning we were able to get the
5 approval to give them to the defense very quickly. So assuming
6 all the right individuals are at DIA, hopefully the same
7 approval will be just as quick.

8 MJ: Okay.

9 MJ: Anything else we need to address?

10 TC[MAJ FEIN]: No, ma'am.

11 CDC[MAJ HURLEY]: No, ma'am.

12 MJ: All right.

13 Court is in recess.

14 [The court-martial recessed at 1822, 1 July 2013.]

Pages 9657 through 9668 of this transcript are classified “SECRET”. This session (2 July 2013, Session 1) is sealed for Reasons 2 and 3, Military Judge’s Seal Order dated 17 January 2014 and stored in the classified supplement to the Record of Trial.

Pursuant to AE 550, the unclassified and redacted version follows.

1 [The court-martial was called to order at 1009, 2 July 2013.]

2 MJ: Court is called to order.

3 Major Fein, please account for parties.

4 TC[MAJ FEIN]: Yes, ma'am. Your honor, all parties when the
5 Court last recessed are again present. Mr. Chavez, court reporter,
6 is absent; Mr. Robertshaw, court reporter, is present.

7 Also, this session is closed session, classified at the
8 SECRET NOFORN level. And, the court security officer executed his
9 closed hearing checklist and it will be added to the post-trial
10 allied documents.

11 MJ: All right, have there been any new appellate exhibits added
12 to the appellate exhibit list?

13 TC[MAJ FEIN]: Yes, ma'am. There are two appellate exhibits
14 that have been marked. The first is Appellate Exhibit 589, this is
15 the EEI list Bates number 00527925 through 00527929 and, Appellate
16 Exhibit 590, the value list, Bates number 00527930 through 00527932;
17 both classified.

18 MJ: All right, the parties have, via e-mail, last night given
19 both the government and the defense appellate briefs for the Fourth
20 Circuit in the *United States v. Truong Dinh Houng*. That case was
21 decided by the Fourth Circuit at 629 f. 2nd 908 in 1980. Both sides
22 presented the appellate briefs with respect to, apparently, an FBI
23 agent testified as to value of government documents in that case.

1 Does either side desire to put anything further on the
2 record other than what has been put in with the case and e-mail?

3 ATC[CPT MORROW]: No, Your Honor.

4 ADC[MAJ HURLEY]: No, ma'am.

5 MJ: All right. The Court finds this of limited value. Both of
6 the briefs talk about the fact that the FBI agent testified, but
7 neither one of them articulates what, if any, qualifications he had
8 to testify. All right, the court is prepared to rule, unless the
9 parties have anything else to add with respect to Mr. Lewis as an
10 expert witness area.

11 ADC[MAJ HURLEY]: No, ma'am.

12 ATC[CPT von ELTEN]: No, ma'am.

13 MJ: All right, the Court has both an unclassified ruling and a
14 classified oral supplement so the plan is I am going to read the
15 unclassified findings of fact followed by the classified oral
16 supplement to the findings of fact. I am not going to read the law
17 during the closed session since I will be reading the unclassified
18 version during the open session and I believe you all know the law,
19 we do not need to read it twice. And then, I will read the
20 conclusions of law, both unclassified and classified.

21 Unclassified ruling; government motion to qualify Mr.
22 Daniel Lewis as an expert.

1 One 1 July 2013, the government moved the Court to
2 recognize Mr. Daniel Lewis as an expert witness in
3 counterintelligence and value of United States Government information
4 to foreign intelligence sources. The government established its
5 foundation in both open and closed sessions. The defense does not
6 oppose Mr. Lewis as an expert in CI generally but does challenge his
7 expertise in offensive CI and value. The defense cross-examined Mr.
8 Lewis regarding foundation in both open and closed sessions. The
9 parties presented oral arguments in closed session. Having received
10 the briefs and having heard oral arguments, the court finds and rules
11 as follows.

12 Findings of fact.

13 1. Mr. Lewis has 29 years of experience in CI including CI
14 operations, investigations, collections, analysis and functional
15 services. Included in this expertise is a tour as chief of training
16 for the Department of Defense Joint CI Training Academy, JCITA for
17 the military and the Defense Intelligence Agency, DIA. Mr. Lewis'
18 experience includes working as a senior investigator for the foreign
19 CI Activity, FCA, which operates the most sensitive and significant
20 espionage investigations.

21 2. From 2006 to 2013, Mr. Lewis was the chief of the
22 counter espionage division at DIA. This was DIA's most senior CI

1 position. Mr. Lewis was the senior level subject matter expert for
2 CI operations and investigations, supervising 50 to 55 CI
3 professionals at any given time. He is the most experienced CI
4 expert in DIA. The CI division--excuse me, the counter espionage
5 division retained oversight of all services--all service CI
6 investigations and operations within the DOD and national security--
7 NSA, National Security Agency, to include espionage investigations
8 and offensive CI operations. Mr. Lewis personally briefed the
9 Secretary and Deputy Secretary of Defense for Intelligence and
10 Congress.

11 3. Mr. Lewis was the lead investigator in that multiple CI
12 investigations including Colonel George Trofimoff and Army Sergeant,
13 retired David Boone, both convicted of espionage and providing
14 information to Russia. Mr. Lewis received a civilian DOD CI
15 investigator of the year award from both cases in 1996 and 1999
16 respectively.

17 4. CI investigations are espionage investigations where
18 DoD has an equity. CI operations involve clandestine activities
19 focused on individuals known to be involved in adversary intelligence
20 or terrorist organizations. Mr. Lewis has experience as a case
21 officer in espionage investigations but has never been a case agent
22 or case agent manager for offensive operations. In his position as

1 chief of counter espionage division at DIA he has oversight for all
2 DoD offensive CI operations.

3 5. Mr. Lewis has testified as a fact witness in court and
4 has never been qualified as an expert witness in any court for any
5 purpose.

6 Classified findings of fact.

7 1. There is no Amazon.com or other place for foreign
8 intelligence services to buy government information--US government
9 information. Foreign intelligence services steal US government
10 information through espionage.

11 2. To prepare for this case, Mister Lewis requested
12 to produce an Essential Elements of Information list,
13 EEI, with a snapshot of 2008 to 2009 for
14 And EEI is data collected from successful counterintelligence
15 operations to provide a snapshot of what

16
17 3. Also in preparation for this case, Mr. Lewis requested
18 to retrieve data about the most and least successful
19 offensive counterintelligence operations
20 This data did not include data from unsuccessful or failed
21 counterintelligence operations.

1 4. An incomplete

5 5. A failed

8 6. There are many reasons incomplete or failed

14 Unclassified conclusions of law.

15 1. Mr. Lewis' expertise comes from his 29 years experience
16 in CI investigations over--and oversight of offensive
17 counterintelligence operations. He is an expert in all facets of CI.
18 His testimony will be based on information gathered through offensive
19 CI operations and systematically entered into the systems employed by
20 the counter espionage division of DIA. These systems are routinely
21 used by DIA to collect data from offensive CI investigations and such
22 data is used to prepare briefings and other memoranda for the

1 Secretary and Deputy Secretary of Defense for Intelligence, and for
2 Congress, and has been generally accepted by these entities as
3 accurate. The data collected by the systems is reliable.

4 2. The Court has issued an oral classified supplement to
5 this ruling. The Court accepts Mr. Lewis as an expert in CI. The
6 Court does not accept Mr. Lewis as an expert in the value of US
7 government information to foreign intelligence services. This
8 expertise is too overbroad. Mr. Lewis may testify and offer an
9 opinion with regard to value of certain charged documents upon laying
10 a proper foundation within the parameters of the oral classified
11 supplement to this ruling. The court has done an analysis under MRE
12 403, and finds that Mr. Lewis's testimony is highly probative. The
13 probative value of the evidence is not substantially outweighed by
14 the danger of unfair prejudice or other MRE 403 factors. The Court
15 will consider this evidence for its proper purpose within the
16 parameters of this ruling and its oral classified supplement.

17 Ruling.

18 Government motion to qualify Mr. Lewis as an expert is
19 granted in part.

20 Ordered this 2nd day of July, 2013.

21 Classified oral supplement; classified conclusions of law.

1 1. The Court accepts Mr. Lewis as an expert in
2 counterintelligence to include offensive counterintelligence
3 operations. The fact that his experience comes from oversight rather
4 than direct involvement as a case agent in effective
5 counterintelligence operations goes to weight.

6 2. The court does not accept Mr. Lewis as an expert in the
7 value of information--of US Government information to foreign
8 intelligence sources.

9 2[sic]. As part of his expertise in counterintelligence,
10 Mr. Lewis may testify about his knowledge regarding the following
11 types of information between 2008 and 2010 with respect to
12

13 1) The
14

15 2) Information of the types of information requested by
16

17 3)
18

that
19

20 4) Mr. Lewis' use of key terms to assess whether there is
21 any information similar to information previously
22

This includes

1 key terms he used, why he used them, what information the key terms
2 retrieved, and what information a key terms retrieved from the
3 charged documents.

4 5) Mr. Lewis may compare the information in the charged
5 documents with information

6 between 2008 and 2010 and testify what
7 information in the charged documents will be valued--be valuable to
8 foreign intelligence services and why.

9 6) To the extent that Mr. Lewis can lay a foundation that
10 the foreign intelligence services of

11 , Mr. Lewis may offer an
12 opinion about the value of portions of the information in the charged
13 documents that is comparable to

14 Such an opinion is within the scope of
15 Mr. Lewis' expertise in counterintelligence. Mr. Lewis may not opine
16 on the value of information in the charged documents that bears no
17 relation or similarity to

18 .
19 All right, is there anything further we need to address
20 with respect to this ruling?

21 TC[MAJ FEIN]: May we have a moment, Your Honor?

22 MJ: Yes.

1 [The trial counsel conferred.]

2 TC[MAJ FEIN]: Ma'am, the United States does not have anything
3 further or questions about the ruling itself, however, the United
4 States would request some time after this in order to apply that
5 ruling to the testimony and possibly make a copy of the handwritten
6 ruling for the parties.

7 MJ: Good luck on that. I have got a lot of scratches, but you
8 are more than welcome to have it.

9 Yes?

10 ADC[MAJ HURLEY]: Yes, ma'am, just a five-minute recess for
11 comfort--if we may do that, it seems like a good time.

12 MJ: All right, I have got to have the classified ruling
13 properly marked. So once I do that, I will go ahead and give that to
14 you all.

15 Actually, is there a way that the parties could get that
16 ruling from the record itself? The only reason I do that is I have
17 gone back and forth with pages. It will make no sense to you if you
18 are getting my notes.

19 TC[MAJ FEIN]: Yes, ma'am.

20 MJ: And you will not be able to read it.

21 TC: Yes, ma'am.

1 MJ: All right. So we will do it that way. How long of a
2 recess do you need?

3 TC[MAJ FEIN]: Unfortunately for that, ma'am, probably--
4 realistically, probably until 11 o'clock, which is the open session.
5 By the time we listen to the audio and get it back, or write it down
6 from the audio.

7 MJ: All right, well here is my suggestion on that then. Why
8 don't we go on the open session, we will read the judicial notice
9 ruling. I will read the unclassified version of this ruling and then
10 maybe at that point it will be a good time to take the extended lunch
11 and then come back, and do Mr. Lewis. Do you see any final need for
12 an open session after that?

13 CDC:[MR. COOMBS]: No, Your Honor.

14 TC[MAJ FEIN]: Well ma'am, you would want to end with an open
15 session for the government to rest. So, we still would want an open
16 session after we elicit Mr. Lewis' opinion testimony.

17 MJ: Okay.

18 TC[MAJ FEIN]: So, we would still want a final open session at
19 the end of the day, I assume.

20 MJ: All right. Well, let's do this, let's have the open
21 session at 11 o'clock, why don't you all come see me about 10 minutes
22 to 11, let me know if--I mean, we can have the open session, it isn't

1 going to be very long and then go right into Mr. Lewis' testimony.
2 If you want to do that and then do some kind of extended lunch. If
3 you would rather do that and you are ready to go, having had an hour
4 with the opinion.

5 TC[MAJ FEIN]: Yes, ma'am.

6 MJ: And then, we can do an extended lunch and do a final open
7 session after that?

8 TC[MAJ FEIN]: Check, ma'am.

9 MJ: Let me know how you decide you want to proceed.

10 Court is in recess until 11 o'clock.

11 [The court-martial recessed at 1025, 2 July 2013.]

12 [END OF PAGE]

1 [The court-martial was called to order at 1112, 2 July 2013.]

2 MJ: Court is called to order. Major Fein, please account for
3 the parties.

4 TC[MAJ FEIN]: Yes, ma'am. All parties present when the Court
5 the last recessed are present. This is an open unclassified session
6 and the court security officer has finished his post-trial checklist
7 and it will be filed in the allied papers.

8 MJ: Major Fein, would you like to set forth for the record any
9 exhibits that have been admitted since the last open session?

10 TC[MAJ FEIN]: Yes, ma'am. There have been two appellate
11 exhibits that have been marked. The first is Appellate Exhibit 589
12 titled EEI List, Bates number 00527925 through 00527929, and
13 Appellate Exhibit 590 which is titled Value List, Bates number
14 00527930 through 00527932.

15 Additionally, Your Honor, as of the start of this session,
16 this current unclassified open session, there's 13 members of the
17 media at the media operations center, one stenographer, no media in
18 the courtroom, and approximately eight spectators in the courtroom.
19 The trailer is available but not being utilized.

20 MJ: Thank you. The Court yesterday held a closed session where
21 we had the witness, Mr. Lewis. The government was laying a
22 foundation for their request to have Mr. Lewis recognized as an
23 expert. We ended the day following that closed session. The Court

1 is prepared today to rule on two issues. One is the government
2 motion to qualify Mr. Lewis as an expert, and the other is relevance
3 and non-hearsay for prosecution motion for judicial notice. Before I
4 announce the rulings on the record, is there anything else we need to
5 address at this point?

6 CDC[MR. COOMBS]: No, Your Honor.

7 TC[MAJ FEIN]: No, ma'am.

8 MJ: All right. I'll begin with the judicial notice ruling.

9 Ruling. Relevance and non-hearsay for prosecution motion
10 for judicial notice. On 6 January 2013, the Court deferred ruling on
11 the government motion for the Court to take judicial notice of
12 certain adjudicative facts until the government offered the evidence
13 at trial to allow the Court to be fully informed when making
14 relevance and hearsay determinations. Appellate Exhibit 472. The
15 Court ruled it would grant the government's motion for judicial
16 notice if the government could establish relevance and the non-
17 hearsay or hearsay exception usage.

18 On 28 June 2013, the government renewed its request for the
19 Court to take judicial notice of the following three adjudicative
20 facts:

21 One, Julian Assange was located in Iceland in February of
22 2010 and was working on the Icelandic modern media initiative.

1 Two, Lieutenant Colonel Packnett was quoted in the New York
2 Times article dated 18 March 2010.

3 And, three, a New Yorker profile of Julian Assange titled,
4 "No Secrets: Julian Assange's Mission For Total Transparency", exists
5 and was dated on 7 June 2010.

6 The government also provided a proffer of relevance and
7 non-hearsay or hearsay exception use, Appellate Exhibit 587, and
8 pinpoint cites to the admitted exhibits in support of its proffer, AE
9 587 Alpha.

10 Defense opposes and maintains its relevance objection to
11 one and hearsay objections to two and three, and relevance as well.
12 The Court adopts the law as stated in its 7 January 2013 ruling
13 regarding judicial notice motions, Appellate Exhibit 472.

14 Conclusions of law.

15 One, the Court has reviewed the proffer by government and
16 each of the pinpoint cites in support in Prosecution Exhibits 81, 123
17 and 30, and the testimony of Special Agent Shaver and Mr. Lamo.

18 The Court also notes the defense conceded during the
19 testimony of Mr. Chad Madaras that any searches on Intelink for
20 Iceland and WikiLeaks in the open source center on the computer
21 shared by Mr. Madaras and PFC Manning was not conducted by Mr.
22 Madaras.

1 Two, each of the three judicially noticeable adjudicative
2 facts are relevant and offered for non-hearsay purposes as set forth
3 in the government's proffer, Appellate Exhibit 587.

4 Ruling. The government motion for judicial notice of the
5 adjudicative facts in one through three above is granted. So ordered
6 the 2nd day of July, 2013.

7 We'll have that marked as the next appellate exhibit in
8 line. All right.

9 Proceeding on. Ruling. Government motion to qualify Mr.
10 Daniel Lewis as an expert. Before I read this unclassified ruling, I
11 do want to advise that there has been a classified supplement to this
12 ruling that will not be read in open court.

13 On 1 July 2013 the government moved the Court to recognize
14 Mr. Daniel Lewis as an expert witness in counterintelligence, CI, and
15 value of U.S. government information to foreign intelligence sources.
16 The government established its foundation in both open and closed
17 sessions. The defense does not oppose Mr. Lewis as an expert in CI
18 generally, but does challenge his expertise in offensive CI and
19 valuation. The defense cross-examined Mr. Lewis regarding foundation
20 in both open and closed sessions. The parties presented oral
21 argument in closed session. Having received the briefs and having
22 heard oral arguments, the Court finds and rules as follows:

1 Findings of fact. Mr. Lewis has 29 years of experience in
2 CI, including CI operations, investigations, collections, analysis
3 and functional services. Included in this experience is a tour as
4 Chief of Training for the Department of Defense, DoD, Joint
5 Counterintelligence Training Academy, JCITA, for the military and
6 defense DIA. Mr. Lewis's experience includes working as a senior
7 investigator at the Foreign CI Activity, FCA, which operates
8 sensitive and significant espionage investigations.

9 Two, from 2006 to 2013 Mr. Lewis was the Chief of the
10 Counterespionage Division at DIA. This was the DIA's most senior CI
11 position. Mr. Lewis was the senior level subject matter expert for
12 CI operations and investigations, supervising 50 to 55 CI
13 professionals at any given time. He is the most experienced CI
14 investigator in DIA. The counterespionage division retained
15 oversight of all CI investigations and operations with DOD and the
16 National Security Agency, NSA, to include espionage investigations
17 and offensive CI operations. Mr. Lewis personally briefed the
18 Secretary and Deputy Secretary for Defense for Intelligence and
19 Congress.

20 Three, Mr. Lewis was a lead investigator in multiple CI
21 investigations including Colonel George Trofimoff, an Army sergeant
22 retired David Boone, both convicted of espionage and providing
23 information to Russia. Mr. Lewis received the Civilian DoD CI

1 Investigator of the Year Award for both cases in 1996 and 1999
2 respectively.

3 Four, CI investigations or espionage investigations where
4 DoD has an equity, CI investigations involve clandestine activities
5 focused on individuals known to be involved in adversary intelligence
6 or terrorist organizations. Mr. Lewis has experience as a case
7 officer in espionage investigations, but has never been a case agent
8 or a case agent manager for offensive CI operations. In his position
9 as Chief of the Counterespionage Division at DIA he has oversight for
10 all DoD offensive CI operations.

11 Five, Mr. Lewis has testified as a fact witness in court,
12 but has never been qualified as an expert witness in any court for
13 any purpose.

14 The law.

15 One, a witness who is qualified as an expert by knowledge,
16 skill, experience, training or education may testify in the form of
17 an opinion or otherwise, if: A, the expert scientific, technical or
18 other specialized knowledge will help the trier of fact to understand
19 the evidence or to determine a fact in issue; B, the testimony is
20 based on sufficient facts or data; C, the testimony is the product of
21 reliable principals and methods; and, D, the expert has reliably
22 applied the principals and methods to the facts of the case. (M.R.E.
23 702)

1 Two, an expert may base opinion on facts or data in the
2 case that the expert has been made aware of or has personally
3 observed. The expert in the particular field -- if experts in the
4 particular field would rely on those kind of facts or data in forming
5 an opinion on the subject, they need not be admissible for the
6 opinion to be admitted. (M.R.E. 703 in relevant part).

7 Three, the Court is the, "gatekeeper" for all expert
8 testimony, whatever the basis. To allow expert testimony the Court
9 must find relevance and reliability. Among the factors the Court may
10 consider to determine whether expert testimony is admissible under
11 M.R.E. 701 is -- excuse me -- 702, is whether a theory or technique
12 has been tested; two, whether it has been subject to peer review and
13 publication; three, the known or potential rates of error in using
14 the particular scientific techniques and standards controlling the
15 techniques, operations; and, four, whether the theory and technique
16 is generally accepted in the particular scientific field. These
17 factors are not a "test" for reliability, rather reliability is a
18 flexible inquiry focused on the goal of insuring that the expert,
19 "whether basing testimony on professional studies or personal
20 experience employs in the courtroom the same level of intellectual
21 rigor that characterizes the practice of experts in the relevant
22 field". *United States v. Sanchez* 65 MJ 145 at 149, Court of Appeals

1 for the Armed Forces, 2007, citing *Kumho Tire Company LTD v.*
2 *Carmichael* 526 US 137, 1999.

3 Four, relevant evidence may be excluded if its probative
4 value is substantially outweighed by the danger of unfair prejudice
5 or other conditions.

6 Conclusions of law. One. Mr. Lewis' expertise comes from
7 29 years of his experience in counterintelligence investigations and
8 oversight of offensive counterintelligence. He is an expert in all
9 facets of CI. His testimony will be based on information gathered
10 through offensive CI operations and systematically entered into
11 systems employed by the counterespionage division of DIA. These
12 systems are routinely used by DIA to collect data from offensive CI
13 investigations -- excuse me -- operations, and such data is used to
14 prepare briefings and other memoranda for the secretary -- for the
15 Secretary and Deputy Secretary of Defense for Intelligence and for
16 Congress, and has been generally accepted by these entities as
17 accurate. The data collected by these systems is reliable.

18 Two, the Court has issued an oral classified supplement to
19 this ruling. The Court accepts Mr. Lewis as an expert in CI. The Court
20 does not accept Mr. Lewis as an expert in the value of US Government
21 information to foreign intelligence services. This expertise is too
22 overbroad. Mr. Lewis may testify and offer an opinion with regard to
23 the value of certain charged documents upon laying a proper

1 foundation within the parameters of the oral classified supplement to
2 this ruling.

3 Three, the Court has done an analysis under M.R.E. 403 and
4 finds that Mr. Lewis's testimony is highly probative. The probative
5 value of the evidence is not substantially outweighed by the danger
6 of unfair prejudice or other M.R.E. 403 factors. The Court will
7 consider this evidence for its proper purpose within the parameters
8 of this ruling and it's oral classified supplement.

9 Ruling. The government motion to qualify Mr. Lewis as an
10 expert is granted in part.

11 So ordered, this 2nd day of July of 2013. This ruling will
12 be added as the next appellate exhibit in line.

13 Now, the Court has met briefly with the parties prior to
14 coming on open session today. Yesterday when we held the closed
15 session the testimony was basically with respect to laying the
16 foundation for the Court to rule on whether or not Mr. Lewis would be
17 accepted as an expert and under what conditions and what would be the
18 scope of his testimony and opinions, should the Court accept him as
19 an expert. As my ruling just indicated, I have granted the
20 government's motion in part, so this will necessitate another closed
21 session because Mr. Lewis when he's actually testifying about his
22 testimony and the scope of his opinion within the parameters of the
23 Court's ruling, he hasn't done that yet. So the parties and I

1 discussed how we would proceed today and we set up the following
2 rough schedule. The parties are going to have an extended lunch to
3 go over some issues that they need to do. We'll come back on the
4 record I guess at this point 1330 still good for the parties?

5 TC[MAJ FEIN]: Yes, ma'am.

6 CDC[MR. COOMBS]: Yes, Your Honor.

7 MJ: We'll come back on the record in closed session at 1330 for
8 Mr. Lewis's testimony. We will have another open session in this
9 Court, again, we have to gauge the time for that because some of this
10 goes by how long a witness testifies, but we are, the parties have
11 approximated, we should be ready to go at 1530. Is that correct?

12 TC[MAJ FEIN]: Yes, ma'am.

13 CDC[MR. COOMBS]: Yes, Your Honor.

14 MJ: One of the additional issues that was discussed during the
15 R.C.M. 802 conference is I have two roles here, my role as a military
16 judge is to rule on interlocutory questions like I just did, and my
17 role in a bench trial as the fact finder is to consider evidence
18 that's presented before me on the merits. Now, in yesterday's closed
19 session a general foundation was laid for the purposes of the expert
20 opinion, and rather than have that same testimony being laid out all
21 over again before the finder of fact, the government has proposed and
22 I believe the defense has concurred that the Court may consider in

1 its finder of fact role the testimony that was set forth in
2 yesterday's closed session. Is that correct?

3 CDC[MR. COOMBS]: Yes, Your Honor.

4 TC[MAJ FEIN]: Yes, Your Honor. And also in the open session as
5 well because the government broke the foundation into opening and
6 close.

7 MJ: And the defense did as well. So it's lays basically all of
8 Mr. Lewis's testimony.

9 CDC[MR. COOMBS]: Yes, Your Honor.

10 TC[MAJ FEIN]: Yes, ma'am.

11 MJ: Is there anything else at this point we need to address
12 prior to recessing the Court till we reconvene for the closed session
13 at 1300 and we have our public session at 1530?

14 TC[MAJ FEIN]: No, ma'am.

15 CDC[MR. COOMBS]: No, ma'am. Just for the public, 1530 would
16 be 3:30.

17 MJ: Thank you. All right. Court is in recess until 1530 or
18 3:30.

19 **[The court-martial recessed at 1128, 2 July 2013.]**

20 **[END OF PAGE]**

Pages 9680 through 9772 of this transcript are classified “SECRET”. This session (2 July 2013, Session 2) is sealed for Reasons 2 and 3, Military Judge’s Seal Order dated 17 January 2014 and stored in the classified supplement to the Record of Trial.

Pursuant to AE 550, the unclassified and redacted version follows.

1 [The court-martial was called to order at 1354, 2 July 2013.]

2 MJ: Court is called to order. Major Fein, please account for
3 the parties.

4 TC[MAJ FEIN]: Yes, ma'am, all parties when the Court last
5 recessed again present. Ma'am, this session is a closed session
6 classified SECRET level. The court security officer completed a
7 closed hearing checklist and it will be filed in the post-trial
8 allied documents.

9 MJ: All right. Is there anything we need to address before we
10 call the witness?

11 TC[MAJ FEIN]: No, ma'am.

12 ADC[MAJ HURLEY]: No, ma'am.

13 MJ: All right. Hold on just a moment, let the record reflect I
14 am taking this with a new SECRET computer that does not appear to
15 have Microsoft Word. Let's take a brief recess. If there is some
16 automation person that can come up and help.

17 Court is in recess in place.

18 [The court-martial recessed at 1355, 2 July 2013.]

19 [The court-martial was called to order at 1357, 2 July 2013.]

20 MJ: Court is called to order. Let the record reflect that all
21 parties present when the court last recessed are again present in

1 court and the court is equipped with Microsoft word. I am ready to
2 proceed.

3 TC[MAJ FEIN]: Ma'am, the United States recalls Mr. Danny Lewis.
4 **DANNY LEWIS, CIVILIAN, was recalled as a witness for the prosecution,**
5 **was reminded of his oath, and testified as follows:**

6 **REDIRECT EXAMINATION**

7 **Questions by the trial counsel[MAJ FEIN]:**

8 Q. Sir, I would like to start off by having you focus on the
9 CIDNE-A database. Are you familiar with the CIDNE-Afghanistan
10 database?

11 A. I am.

12 Q. Sir, how are you familiar with the database?

13 A. I reviewed a small sampling of that database in preparation
14 for my testimony.

15 Q. And sir, in your own words, how would you--how do you
16 describe the CIDNE-A database?

17 A. It was reports of activities that US forces were conducting
18 in Afghanistan. It kind of ranged on my--what I saw was IED attacks,
19 meetings with officials and--around the countryside. One of them is
20 actually a soldier that had been, it looks like, had been captured.
21 But generally, the activities, convoys, those type of ongoing
22 military activities that were happening in Afghanistan.

1 Q. Sir, I'm going to retrieve Prosecution Exhibit 111b. Sir,
2 I am handing you what has been admitted as 111b, a stipulation of
3 expected testimony of Lieutenant Commander Hoskins. Sir, could you
4 please review paragraph 10 and 11 on pages 2--starting on page 2 and
5 look up when you are finished?
6 [The witness did as directed.]

7 A. Okay.

8 Q. Sir, have you read this stipulation of expected testimony
9 before?

10 A. I have.

11 Q. And sir, what government information within the CIDNE-
12 Afghanistan database would a

13

14 A.

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19 Q. And, how do you know--well first, sir, which of the foreign
20 intelligence services would be interested in that information in
21 2009, 2010; which of those three?

22 A. All three would be interested in it.

1 Q. Sir, how do you know that all three are looking for that
2 type of information?

3 A. Based on my experience, all of our adversaries would like
4 to know how we conduct our operations at any point and any time.
5 This was our fighting force. The way we were doing things here in
6 Afghanistan would be the way we would do things in the future in,
7 potentially, other areas of the world. That would be a collection
8 requirement of any of our adversaries, much like we have a
9 requirement to collect on foreign militaries who are our adversaries.

10 Q. And sir,
11

12 A.

13 Q.
14

15 A. I know that, one, from the EEI reports where we know that
16 they are asking for that type of information. And,
17

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20

--what will they know?

21 I know I am not doing a good job of that.

22 Q. What do you mean, sir?

1 A. All of the information provided in the

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So, we know

5 they have asked for it. We know

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7

8 Q. And sir, do you have an opinion, do you have an actual

9 opinion about

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11 A. Yes.

12 Q. And sir, how confident are you in that opinion you have?

13 A. Very.

14 Q. And sir, what is your opinion of

15

16 A.

17 Q. Sir, is that based off of one document or the entire

18 database?

19 A. It is based off of what

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Q. Sir, I am retrieving----

MJ: Yes?

ADC[MAJ HURLEY]: Just a point of clarification. Is Mr. Lewis testifying from his memory or from the EEI document and the price document? I got confused.

MJ: All right, do you want to--are you testifying from your memory or from the EEI document, or both?

WIT: Is all combined, Your Honor.

MJ: All right. Go ahead.

Q. Your Honor, I am retrieving prosecution Exhibit 111b from the witness. Mr. Lewis, are you familiar with the detainee assessment briefs database?

A. I am.

Q. Sir, and how are familiar with the detainee assessment briefs?

1 A. I reviewed some of those reports in preparation for my
2 testimony.

3 Q. And sir, in your own words, what are those reports?

4 A.

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11 Q. Sir, if you could--one moment please. One moment please,
12 Your Honor. Your Honor, I am retrieving prosecution Exhibit 131, a
13 stipulation of expected testimony of Mr. Motes. Sir, I am handing
14 you this prosecution exhibit. Sir, could you please review
15 paragraphs 10(a) through 10(c), 11 and 12, sir, on page three and
16 look up when you are finished?

17 [The witness did as directed.]

18 A. Okay.

19 Q. Sir, have you read the stipulation by Mr. Motes about the
20 detainee assessments before?

21 A. Yes.

1 Q. And, what government information within

2
3
4 A. All of them would like to know the information because it
5 gives--what they get from the document is, one,

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10 We know the

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13 When you get to the end of the document, we start
14 listing the areas that we want to explore. When you lay all of those
15 out in a--when you have a lot of those, you start creating our
16 requirements, the information that the US government is looking for.
17 And, we are trying to satisfy that requirement

So, from that

standpoint--of course would want to know about that, but I have
not seen any specific EEI's or anything like that where , from
GTMO, was seeking that type of information.

Q. And sir, have

A.

Q.

A.

Q. So, you do not know of an exact--you cannot recollect, sir,
whether the would pay for that type of information or not?

1 A. In the detainee brief, no.

2 Q. Okay, sir. And, sir, do you have an opinion on how much
3 the would pay for that type of information?

4 A. I do.

5 MJ: Yes?

6 ADC[MAJ HURLEY]: Objection, ma'am, relevance. I do not believe
7 the witness, in his foundation connected the timeline of this
8 estimate as between 2008 and 2010.

9 MJ: That is true; sustained.

10 Q. Mr. Lewis, what government information within the detainee
11 assessments would the want in 2009 and 2010?

12 A. Everything that would give us--everything that would tell
13 them what

14 Q. And how do you know that, sir, for the timeframe of 2009,
15 2010?

16 A. From the counterintelligence standpoint which I am looking
17 at from their counterintelligence aspect as well, from my experience,
18 any time that we know what our adversaries do not know, it gives us
19 the upper hand. So, when we are telling anyone, to include the
20 , based on what our information needs,

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22

1
2 then they use that to their
3 advantage against us.

4 Q. So sir, excluding present day, how do you know that
5 information that that is what the
6

7 A. Right. As a professional intelligence service, the
8 are always after that type of information just like all of
9 our adversaries are.

10 Q. And sir, do you know or have the paid for this
11 type of information in 2009, 2010?

12 A. I cannot definitively say that, no.

13 Q. Sir, have the paid for that information prior to
14 2009, 2010?

15 A. Yes.

16 Q. And, have the--did the pay for this type of
17 information after 2009, 2010?

18 A. I could not say that.

19 Q. Okay sir, how do you know it was before 2009, 2010?

20 A. Based on my experience with investigations with
21 investigations that were involved people providing this type of
22 information to the .

1 Q. And sir, do you have an opinion about how much the

2 ----

3 MJ: Yes?

4 ADC[MAJ HURLEY]: Objection, ma'am, relevance, fitting it within
5 the scope of the Court's order from 2008 to 2010.

6 MJ: Mr. Lewis, when was the last time you were aware that the
7 similar type information?

8 WIT: That is contained in the , ma'am?

9 MJ: Yes. , I will go even broader
10 than that.

11 WIT: That would be--what specific information, ma'am, that would
12 probably be where I know, based on experience I have that I was
13 personally involved in, would be the mid-80s. But, with our
14 continuing education as counterintelligence professionals,

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21 MJ: All right, sustained.

22 TC[MAJ FEIN]: May I have one moment, Your Honor?

1 MJ: Yes.

2 Redirect Examination Continued:

3 Q. Sir, you just testified about the
4 in 2009, 2010 and the

5
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7 A.

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16 Q.

17
18 A. Yes.

19 Q. And how do you know that, sir?

20 A.

21

1 Q. And, what position were you in at that time sir, to oversee
2 those operations?

3 A. Overseeing the--having visibility over all of the DoD
4 offensive operations in DoD.

5 Q.

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7 A.

8 Q.

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10 A.

11 Q.

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13 A.

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17 Q.

18 A.

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20 Q.

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22 MJ: Yes?

1 ADC[MAJ HURLEY]: Objection, ma'am, relevance--not relevance,
2 foundation, I apologize. That the--an inadequate foundation has been
3 laid because he has not indicated that it is the information that the
4 was the same information that was contained in
5 these

6 TC[MAJ FEIN]: Your Honor, the first question I asked Mr. Lewis
7 was, if he knows of--I started with having collection
8 requirements or and that is what he has are testified to
9 is what was contained in the

10 MJ: All right, why don't you ask it one more time?

11 TC[MAJ FEIN]: Yes, ma'am.

12 Q. Mr. Lewis, what type of information in the
13 are foreign intelligence services interested in
14 between 2008 and 2010?

15 A.

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A lot of the information contained in the
are what I consider to be our tactics, techniques and
procedures and .

Q. So sir, what type of
that the , between 2008 and 2010, would be interested in?
A.

Q. And sir, what does that, if anything, does that have to do
with
A. were the part
of that.

Q. Okay, sir. So, backing up, what, again, in

A. Correct.

Q. ----are the ?

1 A.

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the

11 area of interest part of that report.

12 Q.

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15 A.

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17 Q.

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19 A.

20 Q.

21 A.

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Q.

MJ:

ADC[MAJ HURLEY]: Again ma'am, foundation. If you listen to his answer, one, the question did not call for him to say that the opinion was value between 2008 in 2010. The answer was too general. It was a general answer about

MJ: All right, before you get a little more specific, I do want to ask a couple of clarifying questions.

WIT: Yes, ma'am.

1 MJ: When you testified earlier in response to Major Fein's
2 question, I thought I heard you testify that the had asked--
3 you--we minute, let me see here.

4 [Pause]

5 MJ: All right, never mind about that. But, specifically to the
6 information in the and the type of
7 information that is in there, in 2009 and 2010, what particular--I
8 guess we are talking about
9 what types of information relevant to what you reviewed in the
10 in the charged documents would be of
11 during that time?

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14 WIT: The--okay, ma'am. I think when I got started on the
15 , within the
16 theater of operations,

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19 that gives us an option to counter those
20 activities. So, if they are aware of a that is in
21 and the , they have a way
22 to influence, does that information--do they need to

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that area, generally all of that type of information.

MJ: All right.

WIT:

. They are not out
providing any other information. It is all supporting--and similar
to the

is what is happening in that
theater. We are not dragging in other areas of the country there--of
the world, I am sorry, other areas of the world.

MJ:

WIT:

1 MJ: All right. I am going to overrule the objection.

2 ADC[MAJ HURLEY]: Ma'am, may I be heard?

3 MJ: Yes.

4 ADC[MAJ HURLEY]: It is the position of the defense that if you,
5 again, you listen to Mr. Lewis' testimony, it is of a very general
6 nature. What we believe, consistent with your order, with respect to
7 his testimony, it has to say specifically, this information is
8 replicated--the information in the EEI are from his memory. It is
9 replicated within the charge documents or the stipulation of expected
10 testimony. And, we still do not believe that Mr. Lewis has quite
11 made that connection.

12 MJ: My order is not that strict.

13 ADC[MAJ HURLEY]: Ma'am, I said, "consistent with."

14 MJ: Okay, overruled. Go ahead.

15 **Redirect Examination Continued:**

16 Q.

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19 A.

20 Q.

21 A.

1 Q.

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3 MJ:

4 ADC[MAJ HURLEY]: Ma'am, we would object to the form of the

5 question. It

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12 Q.

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14 A.

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18 Q.

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20 A.

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4 Q. And why is that, sir?

5 A.

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7 MJ:

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9 WIT:

10 MJ:

11 WIT:

12 Q. Your honor, I am retrieving Prosecution Exhibit 131 from
13 the witness. Sir, now I would like to focus your attention on the
14 diplomatic cables. Are you familiar with the Department of State Net
15 Centric Diplomacy Database?

16 A. I am now.

17 Q. And how did you become familiar with the database?

18 A. I reviewed it in preparation for my testimony.

19 Q. In your own words sir, what does it consist of?

20 A. It consist of reports within the State Department of the
21 activities that were happening out in the field locations, summaries
22 of meetings, conferences, all of the inner workings of what the State

1 Department is reporting back to the headquarters, what its field
2 personnel were doing and what they were learning and what they were
3 saying.

4 Q. Sir, what government information within the Department of
5 State cables would the , if at all,
6 want in 2008 through 2010?

7 A. Just about all of it.

8 Q. What do you mean, sir?

9 A. That is the inner workings of the US State Department.
10 Every adversary would want to know what we are doing diplomatically
11 around the world. That will be a standard collection requirement, as
12 is standard requirement for us to find out what is happening in other
13 countries within their diplomatic channels.

14 Q. And how do you know that, sir?

15 A. Experience.

16 Q. And sir, when you said, "Just about all of them,"
17 specifically about , what about
18 those three? Would all three or one of them not want----

19 A.

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1 Q. And sir, how do you know--we will take one at a time. How
2 do you know the

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4 A.

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13 Q. Sir, why did you pick those key terms to search?

14 A. Not sure what was in the database, I knew when it comes to
15 State Department that those--that, for

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17
18 so I was--

19 Q. So, why--I guess you answered the, "why", but--well, could
20 you provide more details of the Court, sir, why you chose,
21 why you chose, as your search terms?

1 A.

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6 Q.

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8 A.

9 Q.

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11 A.

12 Q.

13 A.

14 Q.

15 A.

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19 Q.

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1 A.

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11 Q.

12

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14 A.

15 Q.

16 A.

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20 Q. And sir, when you looked at the State Department cables,
21 did you do a keyword search for these as well?

1 A. I just did,

2 I did not do

3 Q. Okay, sir. And, why did you select those as your search
4 terms?

5 A. Because I know for sure that that is a standing
6 requirement, has been, and will be, and I was curious. That's one
7 one of the search terms I used, much I knew it was
8 a top issue for . I was searching the database for that area.

9 Q.

10

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12 A. .

13 Q.

14 A.

15 Q.

16 A.

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18 Q.

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20 A.

21 Q.

1 A.

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3 Q.

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6 A. .

7 Q.

8 A.

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12 Q. And sir,

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14 A.

15 Q.

16 ADC[MAJ HURLEY]: Objection, ma'am.

17 MJ: Yes?

18 ADC[MAJ HURLEY]: Foundation; I understood that he said the

19 . We would

20 say that is not foundationally helpful to the opinion he is about to
21 render.

22 MJ: Did the

1 WIT: I am not exactly sure of the whole spreadsheet of all of
2 the data that was provided there other than it was characterized as

3

4 MJ: I'm going to sustain the objection based on that
5 foundation.

6 TC[MAJ FEIN]: yes, ma'am.

7 Q. Sir, are there any other cases in your experience from 2008
8 to 2010 that involved the

9

10 A. No.

11 Q. Okay, sir. So now just focusing on

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15 A.

16 Q.

17 A.

18 Q.

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20 A.

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search----

MJ: Yes?

ADC[MAJ HURLEY]: Objection, ma'am. He said there were 900 documents. In his first testimony was that there were 900 hits responsive to his inquiry which there could be multiple responses per document. I guess we would just like to clarify that particular part of his testimony.

MJ: You can do that on cross examination.

ADC[MAJ HURLEY]: yes, ma'am.

MJ: Go ahead.

A. Repeat the question?

Q. Absolutely, sir. Sir, what is your opinion on

A.

Q. Okay, sir. And, how do you, or why do you believe this, Sir?

A. Based on what

TC[MAJ FEIN]: May I have a moment, Your Honor?

1 MJ: Yes.

2 Q. Sir, I would like to now focus the testimony on the CIDNE-
3 Iraq database. Are you familiar with the CIDNE-I database?

4 A. I am.

5 Q. And sir, how are you familiar with the database?

6 A. I reviewed that database in preparation for my testimony.

7 Q. In your own words, sir, please describe the CIDNE-Iraq
8 database?

9 A. CIDNE-Iraq was the activities that the US forces were,
10 much like the CIDNE-A where how
11
12
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15

16 for
17 all of that.

18 Q. Sir, I am retrieving Prosecution Exhibit 112. Sir, I am
19 handing you Prosecution Exhibit 112, the stipulation of expected
20 testimony from Lieutenant Colonel Nehring. Sir, could you please
21 turn to page 3 and review paragraphs 9 through 13 and number 15 and
22 look up when you are finished?

1 [The witness did as directed.]

2 MJ: What were the paragraphs that you just said?

3 TC[MAJ FEIN]: Your Honor, paragraphs 9 through 13 and 15,
4 starting on page 3.

5 A. Okay.

6 Q. Sir, have you read this stipulation by Lieutenant Colonel
7 Nehring about CIDNE-I before?

8 A. Yes.

9 Q. And, what government information within the CIDNE-Iraq
10 database with the in 2008 to 2010?

11 A. They would have all wanted that type of information.

12 Q. What type is that, sir?

13 A. All of the information contained--
14
15
16

17 Q. And sir, how do you know at the
18 were looking for that type of information from '08 to 2010?

19 A. They would always want to
20 know how we are going to conduct a war in any type of environment.

21 Q. And sir,
22

1 A. .

2 Q.

3 A.

4 Q.

5 A.

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9 Q.

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11 A.

12

13 Q.

14 A.

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16 Q. Sir, do you have an opinion about how much

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18 A.

19 Q.

20 A.

21 Q.

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1 A. .

2 Q. Why is that, sir?

3 A. I looked at a very small sampling of the size of the
4 document. I only looked at around 40 or so documents and 10 to 12
5 percent contained significant information that I thought met this
6 requirement. The scope of that information, the number of that, I go
7 back, like the CIDNE-A, the most that

8

9

10

11 Q. Sir, I am retrieving Prosecution Exhibit from you.

12 Sir, I would now like to have you focus your testimony on the

13 Are you familiar with a

14 A. Yes.

15 Q. Sir, how are you, in general, familiar with what

16

17 A.

18

19 Q. Do you use it at work, sir?

20 A. I do.

21 Q. Sir, are you familiar with

22

1 A. I am.

2 Q. And, how are you familiar with it, sir?

3 A. I reviewed that in preparation for my testimony.

4 Q. In your own words sir, how would you describe the one you
5 reviewed for this testimony?

6 A. I reviewed it

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13 Q. Sir, I am handing you Prosecution Exhibit

14 Could you please review that?

15 MJ: What number is that?

16 TC[MAJ FEIN]: ma'am.

17 MJ: Okay.

18 A. Okay.

19 Q. Sir, could you briefly review that and look up when you are
20 done?

21 [The witness did as directed.]

22 A. I have seen--okay, yes. It is fairly long.

1 Q. Yes, sir. Sir, have you reviewed that document before your
2 testimony right now?

3 A. I have.

4 Q. Sir, what government information within
5 want in the 2008 to
6 2010 timeframe?--Or, if any of them, I do not want to presume it?

7 A. Yes. No, they would want it all, but not everything in it
8 probably.

9 Q. So, all three countries or just one, two or----

10 A. No, all want it.

11 Q. Okay sir, and what information in it would they all want?

12 A. It is
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19 All of that would be of
20 interest to the foreign intelligence service.
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There is people

Q. Sir, how do you know that

A. It is part

1 Q. And sir, how to you know the foreign intelligence services,
2 the are looking for this
3 information from 2008 to 2010 timeframe?

4 A. Other than just knowing it, I know it through the
5
6

7 Q. Sir, in the 2008 to 2010 timeframe, did the
8 this type of information?

9 A. Yes.

10 Q. And how do you know that, sir?

11 A. Through that were in against .

12 Q. And sir, in 2008 to 2010, how much did the
13

14 A. Information--

15 . I

16 cannot think of a--I am
17
18

19 . I don't know how to equate that exactly.

20 That is

21 Q. Sir, do you have an opinion about
22

1 A. Yes.

2 Q. And, how confident are you with that opinion?

3 MJ: Yes.

4 ADC[MAJ HURLEY]: Ma'am, foundation; he just said, "I do not
5 know how I would value this information." Those are the words the
6 witness just said.

7 MJ: Well, before he gives his opinion, ask him how he would
8 value the information and what the basis of it is.

9 TC[MAJ FEIN]: Yes, Ma'am.

10 Q. Mr. Lewis, you just testified that you have not personally
11 seen that correct?

12 A. Right.

13 Q. What have you seen before that similar

14 A.
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Q. Sir, specifically you What do you
mean by that,

A.

Q. Sir, in the 2008 to 2010 timeframe were the
seeking information in reference

A. They would have

Absolutely.

Q. Sir, what about

A. That's----

Q. Is that information in 2008 to 2010 timeframe that the
were looking for?

1 A. Absolutely.

2 Q. Is that type of information contained within

3

4 A. It is.

5 Q. Sir, did the in the 2008 to 2010 timeframe

6

7 A. That type of information, yes.

8 ADC[MAJ HURLEY]: Objection. He never talked about--Mr. Lewis
9 never talked about

10 TC[MAJ FEIN]: I am sorry. I will rephrase.

11 MJ: Go ahead.

12 Q. Mr. Lewis, what would the

13

14 A. They would.

15 Q. How do you know that?

16 A.

17

18

19 It is a market for that. Yes.

20 Q. Sir, in the 2008 to 2010 timeframes, did the

21

22

1 A. That type of information, yes.

2 Q. And what do you mean----

3 A. Similar information to that, yes.

4 Q. Sir, have you had a chance to review that document in front
5 of you as

6 A. I have.

7 Q. Sir, is that document consistent with the type of
8 information you just testified about of what the in
9 2008 to 2010?

10 A.

11

12

13

14

15

16

17 to it

18 at all.

19 Q. Sir, I am sorry. So are you saying that that document is
20 the

21 A. Well, it is but I would want to sort it a different way----

22 Q. Okay, sir.

1 A. ----than the way it is like this. This is looks like

2

3

4 Q. Sir, how then does that document compare to the documents
5 you have seen between 2008 and 2010

6 A. It just goes back to the type of information. Now were--

7

8

9 It is still the information need for what our
10 adversary was wanting in that theatre of operations.

11 Q. Sir, for that type of information did the

12

13 A. Yes.

14 Q. How do you know that, sir?

15 A. Based on the EEI that we learned that they wanted in the

16

17 Q. And then how ----

18 A. ----similar information.

19 Q. I am sorry, sir. Keep going.

20 MJ: Just a minute.

21 Yes?

1 ADC[MAJ HURLEY]: I am sorry, Your Honor. Objection,
2 foundation. He is not factored in on that this information that he
3 is looking at in the exhibit is similar to the information that he
4 re----

5 MJ: All right. I am going to overrule that. He has testified
6 that--is

7

8 So, overruled.

9 Proceed.

10 **Questions by the trial counsel, MAJOR FEIN, continued:**

11 Q. Sir, the question was ,

12

13 A.

14 .

15 Q. Sir, when you say that is that the type
16 of document that you have been testifying about? Is it similar?

17 A. Yes.

18 Q. The same similar type of information that is in that

19

20 A. Yes. If it was--yes.

21 Q. How do you know that, sir?

1 A.

2

3 Q. Sir, do you have an opinion about

4

5 A. Yes.

6 Q. Sir, what is your opinion on

7

8 A.

9 Q. Why is that, sir?

10 A. Um, there is still some value to . There is still some
11 work that needs to be done with it. But it is such--

12

13

14

15 I just think
16 that is probably what I would expect if I was--if we were going to
17 ; what I would expect.

18 Q. Sir, you have had in this block of testimony, you have
19 discussed volume. Was your--excuse me, sir. Sir, do you have an
20 opinion about

21

22 A. Um-hmm. I have an opinion. Yes.

1 Q. Sir, how confident are you in that opinion?

2 A. Very.

3 Q. What is your opinion, sir?

4 A. are more credible to any adversary.
5 When we--even in a--if it is a regular espionage case or
6 , those documents need
7 to be evaluated.

8

9

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18 Q. Sir, I asked you about, based off the , is you
19 opinion that is true for the , as well?

20 A. Yes. Absolutely.

21 TC[MAJ FEIN]: Your Honor, may I have a moment?

22 MJ: Yes.

1 [The trial counsel conferred.]

2 TC[MAJ FEIN]: Your Honor, I have no further questions.

3 MJ: All right.

4 MJ: Cross-examination?

5 ADC[MAJ HURLEY]: Yes, Ma'am.

6 WIT: Major Hurley.

7 TC[MAJ FEIN]: Ma'am, the United States is retrieving

8 Prosecution Exhibit from the witness.

9 **CROSS-EXAMINATION**

10 **Questions by the assistant defense counsel, MAJOR HURLEY:**

11 Q. Good afternoon, Mr. Lewis.

12 A. Good afternoon, Major Hurley.

13 Q. Let's set the table first. What I want to talk about is
14 everything that you considered in coming to these valuation opinions,
15 okay?

16 A. Okay.

17 Q. So you considered your experience?

18 A. Yes.

19 Q. You considered your memory of these counterintelligence
20 operations and investigations?

21 A. Part of my experience, I would make that one. But----

22 Q. Okay. Well, we will.

- 1 A. Okay.
- 2 Q. So you considered your experience and your memory together?
- 3 A. I would--yes.
- 4 Q. Now did you consider at all the thing that
- 5 pulled for you? The EEI?
- 6 A. Did I consider----
- 7 Q. The EEI that she pulled for you----
- 8 A. Right.
- 9 Q. ----in January 2013?
- 10 A. Did I----
- 11 Q. Did you consider it?
- 12 A. Did I review that document?
- 13 Q. Yes.
- 14 A. Yes.
- 15 Q. All right. And then finally, you considered the thing that
- 16
- 17 A.
- 18 Q. pulled for you, as well?
- 19 A. Yes.
- 20 Q. Okay. So first off we are going to talk about the EEI.
- 21 A. Okay.
- 22 Q. So the EEI was pulled at your direction?

1 A. Yes.

2 Q. Pulled by

3 A. Yes.

4 Q. Pulled for the purpose of helping you prepare to testify in
5 this trial?

6 A. Yeah.

7 Q. The EEI contains roughly three blocks of information.
8 First it contains the country?

9 A. Okay.

10 Q. Is that right----

11 MJ: What do you mean, countries--okay.

12 Go ahead.

13 A. Yes.

14 Q. The country who has purported to be interested in certain
15 bits of information?

16 A. Yes.

17 Q. It also contains the information that they are purportedly
18 interested in, correct?

19 A. Okay.

20 Q. That----

21 A. You said purportedly. What do you mean by that?

1 Q. Well, I am sorry. It contains the country that has

2

3 A. Yes.

4 Q. The EEI does?

5 A. Right.

6 Q. The one that --the one pulled for
7 you?

8 A. Yeah.

9 Q. It also contains what information that

10

11 A. Who?

12 Q. What information----

13 A. I just want to make sure that I understand when you said

14

15 Q. I meant the country?

16 A. Okay.

17 Q. So it's got the country?

18 A. Yes.

19 Q. It's got the country's info that

20 A. Yes.

21 Q. And it's got an ID number?

22 A. Yes, sir.

1 Q. Okay. In a conversation earlier today you told me that ID
2 number was an internal administrative number?

3 A. I did.

4 Q. You also told me that could pull the information
5 for you that was underlying a specific bit of EEI?

6 A. She could have.

7 Q. So in one of the bits of
8
9

10 A. Okay.

11 MJ: Wait.

12 Q. Any memory of that?

13 A. I don't remember specifically that EEI

14 But I will trust you it's on there.

15 Q. Well, let's just say for example----

16 A. Could I re----

17 Q. ----let's just use this as a hypothetical example----

18 MJ: Okay. I am going to ask the witness, Mr. Lewis, when you
19 are asked a question and you are not sure, don't say, "Okay" like you
20 agree. Just say I don't understand the question, I don't agree or I
21 can't answer that.

22 WIT: Okay, ma'am.

1 MJ: Go ahead.

2 Q. Certainly you could review that document if you wanted.
3 Would you like to really quick?

4 A. I believe you it is on there.

5 Q. Okay. And this is just an example.

6 A. Okay.

7 Q. I am not holding you to this.

8 A. Okay.

9 Q. I am not holding you to these facts. So what
10 could have done if you had expressed interest in that information,
11 she could have pulled all of the information that she had that led
12 her to include information about ,
13 correct?

14 A. Yes. If I can----

15 Q. Okay.

16 A. ----if I can further explain that.

17 Q. Go right ahead.

18 A. What that number would have done, it ties it back to the
19 report----

20 Q. Right.

21 A. ----that the case officer had prepared where that EEI was
22 listed.

1 Q. Sure.

2 A. And it would have given multiple things that happened in
3 that meeting, to include when--how that EEI was asked for.

4 Q. Right. So and could have done that at your
5 direction?

6 A. She could have done that, yes.

7 Q. Certainly. All right. Now, we are going to move on what
8 pulled for you.

9 A.

10 Q.

11 A. All right.

12 Q. I keep renaming that guy. What pulled for you.

13 A. Okay.

14 Q. What he pulled for you were successful counterintelligence
15 operations?

16 A. No.

17 Q. No, I am sorry. He pulled for you the
18 correct?

19 A. [No response.]

20 Q. That corresponded to successful offensive
21 counterintelligence operations?

22 A. That was part of it. I could----

1 Q. Please go forward with----

2 A. Specifically what I asked for was the most successful
3 over the last several years.

4 Q. Right.

5 A. And then subsequently, the least
6 from indicating for whatever reason that
7 there was a low end of what--trying in my mind what the
8 --if that was what was on the list the most the

9

10 Q. Right.

11 A. That type of thing. That was--that is what I had him pull
12 for me.

13 Q. It didn't include any--what he pulled did not include any
14 failed operations, only successful operations?

15 A. That is true because there wouldn't have been

16

17 Q. Right. So you considered those three things?
18 [sic] information?

19 A.

20 Q. The information. And then your memory and
21 experience?

22 A. Yes.

1 Q. That is how you arrived at your conclusions?

2 A. Yes.

3 Q. All right. So, just to clarify, in your career have you
4 ever valued information from the Department of State before?

5 A. No.

6 Q. Have you ever in your career valued information CIDNE-Iraq
7 database before?

8 A. No.

9 Q. Have you ever in your career evaluated information from the
10 CIDNE-Afghanistan database before?

11 A. No.

12 Q. Have you ever in your career evaluated information that
13 those detainee assessment briefs before?

14 A. No. No.

15 Q. Have you ever in your career evaluated the information--a
16

17 A. No.

18 Q. How long did you spend reviewing these charged documents?
19 Let's go by each document. How long did you spend reviewing the
20 Department of State information?

21 A. An hour. Hour and a half.

1 Q. How long did you spend reviewing the CIDNE-Iraq
2 information?

3 A. Probably several hours--um, just----

4 Q. Just CIDNE-Iraq.

5 A. Um, I'd have a hard time separating that because Iraq and
6 Afghanistan, they were back-to-back.

7 Q. All right.

8 A. Hour and a half to 2 hours for both.

9 Q. So for combined, both the CIDNEs, Iraq and Afghanistan, was
10 2 hours max?

11 A. Max.

12 Q. So--gotcha. How long did you spend reviewing the
13

14 A. Um, an hour-and-a-half.

15 Q. How long did you spend reviewing the

16 A. An hour, max.

17 Q. All right. So let's go through these as in the order in
18 which the government went through them, all right?

19 A. Okay.

20 Q. So the first thing we are going to go through is the CIDNE-
21 Afghanistan database, okay?

22 A. Okay.

1 Q. Great. So what you did with the CIDNE-Afghanistan database
2 was you looked at about 40 records?

3 A. I think that is what I've testified to. Yes.

4 Q. Did you pull these records yourself from the database?

5 A. These were part of the charging documents.

6 Q. How did--let's re-ask this question, Mr. Lewis.

7 A. Okay.

8 Q. How did those documents get in front of you?

9 A. The prosecution team helped me--provided----

10 Q. They just sat you down with a binder and all of the
11 documents were in the binder?

12 A. For those--there were a couple--yes. For that, yes.

13 Q. Did you look through the records yourself----

14 A. Yes.

15 Q. ----or did they help you look through?

16 A. No. I read them all myself.

17 Q. All right. And by "all of them" you mean 40 of them?

18 A. For that. Yes.

19 Q. And you found about 10 that were, in your mind, a
20 responsive to the search queries that you were making?

21 A. I think it--I can't remember the specific number. What I
22 remember specifically is for CIDNE-A----

1 Q. Um-hmm.

2 A. ----would have been about 30 percent. So it must have been
3 a little--either 36 documents and I found 12; or around 30 percent
4 for CIDNE-A is what I thought responsive to what I knew was
5 consistent with what our foreign adversaries would want.

6 Q. Sure. Now before you started this process, did you write
7 down the keywords that you were going to be looking for?

8 A. No. I just read those.

9 Q. Right. So you just read the documents and then found as
10 you went through these are the responsive records?

11 A. Based on my experience I know that these are the things
12 that would be of interest to the foreign adversaries?

13 Q. Right. But there was not that up-front process of
14 identifying the words specifically you were looking for?

15 A. No.

16 Q. All right. So you find these records that you believe to
17 be responsive. Now what did--and you compared them with in this
18 instance with CIDNE-Afghanistan, you compared them with your memory,
19 right?

20 A. When I am reading the document, yes.

21 Q. Right.

1 A. As an intelligence professional, the types of information
2 that we knew a foreign adversary would be interested in, yes.

3 Q. So you compared it with your memory those documents?

4 A. Yeah.

5 Q. Now did you ever compare them with specific EEI
6 that you asked her to pull in January 2013?

7 A. That would--yeah. In that case, that also added to my
8 knowledge of what was on that report.

9 Q. But did you look at the responsive records and then look at
10 the EEI that pulled for you or were you just thinking
11 about it as you were looking at the record?

12 A. Probably a little of both.

13 Q. All right. So it is possible that you had the EEI with you
14 at the time?

15 A. Yes.

16 Q. Now, this review happened last week? This review that we
17 are talking about?

18 A. Yes.

19 Q. The hour or so that you spent on CIDNE-Afghanistan?

20 A. Yeah.

21 Q. So you reviewed the documents, you remembered yourself a
22 few things, you looked and you saw the EEI from Now from

1 the things that you remembered yourself, did you ever--did you write
2 anything down about the things that you remembered yourself?

3 A. No.

4 Q. Did you ever take this information in your memory and go
5 back to source documents to verify that your memory of the source
6 documents comports with what's actually in those documents that gave
7 you the memory?

8 A. You mean outside of the EEI list?

9 Q. Right.

10 A. No.

11 Q. I'm glad you brought up the EEI list. So you read these
12 documents that you felt were responsive to the EEI information.
13 Right?

14 A. Yes.

15 Q. And the EEI information, it was laid out by country.
16 Right?

17 A. Yes.

18 Q. Laid out by topic and

19 A. Yes.

20 Q. And it was laid out also by this ID number?

21 A. Yes. Well, the ID number was there.

22 Q. Right.

1 A. I don't know how that fit in with cert--with the data.

2 Q. Sure.

3 A. I know what it means but----

4 Q. But what the ID number could have done was give you
5 something to give back to to say, would you
6 pull this information so that I can look at it again?"

7 A. Right.

8 Q. It would have given you that capability?

9 A. It would have.

10 Q. But did you do it?

11 A. No.

12 Q. Did you--and you didn't do it for any one of the documents?

13 A. No.

14 Q. You didn't do it for any of the documents?

15 A. Go back--to go back and ask for more info----

16 Q. Go to

17 A. No.

18 Q. And you didn't go back for any of the document to that
19 space in your brain and say, you know what; I am going to go back and
20 search again to find this information?

21 A. No.

1 Q. Now you testified that during this time

2

3 A. That is what we had----

4 Q. From 2008 to 2010?

5 A. Yeah, that we had learned

6 Yes.

7 Q. Did you ever do anything to go back into those records and
8 see exactly by the

9

10 A. No.

11 Q. For any of those documents that--when you were thinking to
12 yourself , you never went back and
13 said let me get a better description of that?

14 A. Well, no I did not. I felt comfortable with from the
15 standpoint of

16 So I knew that the

17

18

19

20 Q. Right.

21 A. When it comes to that from the EEI and what we were

22 providing. I just didn't feel a need to go back and----

1 Q. So comfortable you never looked back?

2 A. Okay. Yes.

3 Q. Is that an accurate description?

4 A. I don't----

5 Q. That you were so comfortable in your knowledge you never
6 checked?

7 A. I don't know if comfortable. I think secure in my
8 knowledge. Comfortable is a little casual.

9 Q. Right. Sure.

10 A. But I felt like I knew what I was talking about. So
11 certainly----

12 Q. So secure in your knowledge that you didn't even need to
13 check.

14 A. Okay. Yes.

15 Q. Is that accurate?

16 A. I would say yes.

17 Q. Okay. So this

18 that you provided the government,
19 right?

20 A. It is.

21 Q. Right. And the

22 records?

1 A. No. It was a review of the totality of the database based
2 on the sample that I reviewed.

3 Q. Right, and how many records did you review with the CIDNE-A
4 database?

5 A. About 40.

6 Q. Right. So you reviewed 40 records, you thought
7 or so; right? That was one of your givens?

8 A. Yes.

9 Q. And that's based on your memory?

10 A. Yes.

11 Q. Then you thought, well, let me just multiply
12
13
14

15 Is that about right?

16 A. No. I don't think I did it quite that way.

17 Q. How did you do it?

18 A. I think if you look at the totality of the information, the
19 sample of the information, it was---seemed consistent that the reports
20 were prepared the same way and had the same types of information as
21 you go across there. Even of the ones I read, a group of those fit
22 where all of them would have been of value to the foreign

1 intelligence service. When you look at the ones that really had some
2 meat on the bones, some things they

3

4

5

6

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13 Q. Right. And it was a conservative guess?

14 A. I think so.

15 Q. But it was a guess?

16 A. It's my opinion based on my knowledge and my experience.

17 Q. Right. And the likes of which you've never given before,
18 ever?

19 A. Specifically like?

20 Q. Specifically like this.

21 A. You mean----

22 Q. In the opinion you just rendered?

1 A. You mean as an expert?

2 Q. Yes.

3 A. That's correct.

4 Q. Right. So let's talk about the

5 As I recall you indicated that you valued the

6 ; ?

7 A. That would be the--yeah, that was----

8 Q.

9 A. Mostly .

10 Q. Mostly ?

11 A. --I confused everyone with .

12 Q. All right.

13 A. .

14 Q. So the Thanks for

15 clarifying.

16 A. Same type of TTP information that we've seen consistent

17 across those operations. Yes.

18 Q. So let's go through this again. So with the

19

20 A. That's about right. Yeah.

21 Q. And you read those and that took you about an

22 hour?

1 A. I think that is what I said. Yes.

2 Q. Right. And at the end of that time as you looked through
3 those documents, did you consider the EEI that pulled for
4 you?

5 A. Not really. Not at that time. No.

6 Q. Did you consider the data pull that [sic] did
7 for you?

8 A. .

9 Q. I'll never get it right and I----

10 A. We'll just call him

11 Q. ----I apologize. Right. It may save us time.
12 did for you. Did you consider it?

13 A. Not at the time I was reviewing them. No.

14 Q. The only thing you were considering was your memory?

15 A. Experience.

16 Q. Right. Your experience and what you remembered?

17 A. No. Experience and what I know through my experience what
18 would be of interest to a foreign intelligence serve.

19 Q. Right. Did you consider any physical, tangible thing?

20 A. At the time I read them? No. I was reading them to
21 acquaint myself with them; the types of information that was in

1 there; and identify the types of information I thought would be of
2 interest to the foreign intelligence services.

3 Q. So from your memory you thought of the information that was
4 contained in

5 Right?

6 A. From my experience I know that

7

8 Q.

9 A. Or want to know more about.

10 Q. So from that you went to--you again, you delved into your
11 experience. Right? You read and you reviewed your
12 experience. Is that accurate?

13 A. I think that was an on-going--I don't think it was a
14 separate thing. I think as I am reading them I am applying what I
15 know what would be of interest to a foreign intelligence service when
16 I've seen how--what was the format of the documents, they got to be
17 where they're--there is the military, so there is a format there----

18 Q. Right.

19 A. ----it is always the same. You can start going through the
20 specific areas and see some consistency in what you were seeing in
21 those types of documents.

1 Q. Did you--before you started this-- the
2 same question I had for CIDNE-A. Did you write down any key words?
3 Like here are the things I am going to be looking for?

4 A. No.

5 Q. So after you reviewed the
6
7
8

9 A. No. When I was reading them, I was reading them to see the
10 types of information that were in there and then recognizing what
11 would be of interest to the foreign intelligence service so that I
12 had that knowledge then.

13 Q. So after the recognition, you thought of these bits of
14 information that . Correct?

15 A. Yes.

16 Q. And you thought of the bits of information that
17

18 A. Right.

19 Q. And that you thought that this is the information that
20

21 A. And also remember--I also know that the have asked
22 in .

1 Q. Right.

2 A. Okay.

3 Q. Did you ever go back to the information that gave you the
4 understanding that

5

6 Did you ever

7

8

9 A. No. I was never looking for the exact document. I was
10 looking for the types of information I knew that would be of interest
11 because the EEI in most times, is not really specific. It is a type
12 of information. The nuance

13

14 So we're really
15 talking about the same types of information.

16 Q. Right.

17 A. Not specific documents that existed in any one place.

18 Q. But you never went back there at all, did you, Mr. Lewis?

19 A. Back to where?

20 Q. When you looked at the

21 A. Right.

1 Q. ----you never went back to this

2

3

4

5 A. As I stated earlier when we were talking about I am
6 very confident and I know that within the CENTCOM area, the
7 information--

8

9

10

11

12

13 Q. But did you ever check, Mr. Lewis?

14 A. Check for each individual document? No.

15 Q. For the stuff that is

16

17

18 A. I know it is similar.

19 Q. But you never checked, did you?

20 A. I don't have to check. I know it is similar.

21 Q. Mr. Lewis, if you would just listen to this question.

22 A. I'm--okay.

1 Q. Did you check----

2 A. No.

3 Q. Thank you.

4 A. I didn't need to check.

5 Q. But----

6 A. In the CENTCOM area of operations----

7 Q. Right.

8 A. -----

9 It is similar information. It is not like hmm. In that
10 area I am very comfortable; I am very satisfied with my answers. In
11 CENTCOM

12

13

14

15 Q. And you didn't this time either.

16 A. I don't have to.

17 Q. Okay. Let's talk about You said that the

18

19 Is that right?

20 A. State Department cables?

21 Q. The ones that were--yes. State Department cables.

22 A. Yes. Yes, sir.

1 Q. In this instance you did a keyword search.

2 A. It was a database.

3 Q. Right. So you were looking--you were searching on a
4 computer?

5 A. I was.

6 Q. So in this instance did you write down the keywords that
7 you were going to be looking for?

8 A. Nope.

9 Q. You just went off your memory?

10 A. I know them.

11 Q. Right.

12 A. I knew what I wanted to look for.

13 Q. Now, you've considered, obviously, you considered your
14 experience when you were doing this?

15 A. Yes.

16 Q. Did you consider [sic] document?

17 A. Not document. No.

18 Q. Did I get it right that time?

19 A. No. It was

20 Q. Okay----

21 A. We will go with that.

22 Q. Right. You have these days.

1 A. I don't know why you can't remember that Major Hurley?

2 Q. I don't know why either.

3 right?

4 A.

5 Q. I am going to get it. I feel confident.

6 A. I hope so.

7 Q. You didn't consider or you did consider

8

9

10 A. I was aware of the EEI. Yes.

11 Q. Did you consider document?

12 A. Um, no.

13 Q. All right. Okay, so you do the search and you pulled up a

14 cable.

15 A.

16 Q.

17 A.

18 Q.

19 A. Um-hmm.

20 Q. As you recall there were about 900 responses to that?

21 A. Yes.

22 Q. Were there 900 responses or 900 documents?

1 A. I can't tell you that.

2 Q. All right. So you look at the first cable and it contains

3

4

5 A. Yes.

6 Q. Then as you were looking at it you compared it to, again,

7 at this point it was your memory,

8

9 A. My knowledge. Yes.

10 Q. Your knowledge.

11 A. Knowledge and experience.

12 Q. Sure. All right. What do you think the best word is. Is

13 it knowledge, experience or memory? And----

14 A. I don't like memory.

15 Q. Okay. So we will go with experience?

16 A. I think it is based on my experience.

17 Q. That's the word I will use. So you used your experience.

18 Now, your experience, in your mind, you were thinking of one

19 particular document or a particular document that was similar to the

20 information that you saw, right?

21 A. No.

22 Q. This is using your experience.

1 A. I think I know that the

2

3

4 Q. Right.

5 A. So I just know that.

6 Q. Sure.

7 A. So when I am reading those documents it is matching exactly

8 what I know the .

9 Q. No need to go back to look at the documents that created
10 your experience. No need to go back there?

11 A. Absolutely not.

12 Q. You just knew?

13 A. The

14 .

15 Q. Right.

16 A. I know that.

17 Q. And you knew that this information was responsive to it
18 because you spent--how long did you spend reading each cable?

19 A. Going through, looking for where the keyword--where the
20 title is coming up; looking at the meat, the data there. Once you
21 get--you are reading exactly what is being said about that, not the
22 whole cable----

1 Q. Right.

2 A. ----but who was saying what to whom in those documents.

3 Q. Right. So you read that, read it for about a minute?

4 A. I don't know exactly how long it would be.

5 Q. So it----

6 A. There was more information in some than there were in
7 others.

8 Q. Right. So was it longer than a minute for each one?

9 A. I don't know how to answer that.

10 Q. Okay. Some amount of time was spent looking at it?

11 A. I spent time. Yes.

12 Q. And you never went back for all of those cables that you
13 found or all of that data you found you never went back and verified
14 that it was the same or similar information?

15 A. Nope. It was similar--same information. I mean there is
16 only so many ways you can characterize

17 . So when
18 you read through there if you know that is what the

19 and you are reading that, that is what they are
20 interested in. I didn't have to go back and find an underlying or
21 supporting document. It is about what's ..

22 . It is what the documents

1 were about. I was very confident in my experience that was exactly
2 what the information is.

3 Q. This is going to be how it ends every time, Mr. Lewis? So
4 confident that you didn't need to check?

5 A. I don't know what you want me to check.

6 Q. Did you check or not?

7 A. Check what, Major Hurley?

8 Q. Check the documents, the underlying documents that gave you
9 your experience. Did you ever go back and check for any of them?

10 A.

11

12 Q. So EEI told you that?

13 A. That is not EEI.

14 Q. The EEI that was pulled by that gave you that
15 information?

16 A. That's the

17 Q. Right. I apologize for my---

18 A. No, no. I just want to make sure from a nuance standpoint.
19 This isn't making this up. This is from the reports that
20 we got from the .

21 Q. Right. So did you consider what pulled for you?
22 That EEI when you were doing this?

1 A. Consider? What do you mean consider?

2 Q. Was it in your mind as you were skimming through these
3 documents?

4 A. Yes. Yes.

5 Q. But did you have it in front of you?

6 A. When I was viewing those--specifically were those
7 documents--no because those keywords are--I didn't need any
8 supporting documentation for that.

9 Q. It was all from memory?

10 A. Experience.

11 Q. Experience. Let's talk about CIDNE-I now. We are just
12 going to go through a similar process, Mr. Lewis, with respect to
13 CIDNE-I. With CIDNE-I you considered about 40 records?

14 A. I think that was the sample. Yes.

15 Q. Roughly the same number that you considered with CIDNE-A?

16 A. Basically. Yes, sir.

17 Q. With CIDNE-I did you have document in front of
18 you?

19 A. Not at the time when I was reviewing it. No.

20 Q. Did you have document in front of you.

21 A. No. Very good.

1 Q. Thanks. One time. So all of this was going off of your
2 experience?

3 A. I was reading it to get of my experience the intelligence
4 value that was contained in those documents. Yes.

5 Q. So as you were going through there you, again, did you ever
6 compare what was in those documents and you found a number of
7 responsive records?

8 A. Yes.

9 Q. Did you ever compare what was in those documents to any
10 original source material?

11 A. No.

12 Q. Now you said
13

14 A. That was my low estimate. Yes, sir.

15 Q. That estimate, again, this is the first time you've offered
16 any such estimate with respect to the CIDNE-I database?

17 A. Yes.

18 Q. Now, I guess getting back to comparing these documents, did
19 you ever as you were looking at it, you knew so well that the--in
20 this case,
21
22

7 . The same type of information. Did I go back and look for
8 every, single document if that was it? No, sir.
9 I did not.

10 Q. Let's talk about the . Before the
11 government showed you or before the first
12 time you reviewed it, had you ever seen one before?

13 A. Electronically.

14 Q. Right.

15 A. You know where you go one your email account and you pull
16 up--you're looking for someone. I've never seen it printed out.

17 Q. And again, you first used your experience, right?

18 A. Yes, sir.

19 Q. Did you use document?

20 A. I was aware of the EEIs on that document. Yes.

21 Q. Did you use document?

22 A. No. No.

1 Q. So did you ever, this is the last time maybe I will ask
2 you; did you ever go back to these source documents and review the
3 information that gave you your experience with respect to

4
5 A. No. In that case where they--when I know where the
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11 Q. Let's use the CIDNE-Iraq database. Do you recall what
12 specific information was in the CIDNE-Iraq database that--and just
13 one or two topics, that you felt
14

15 A.
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17
18

19 Q. Sounds good. So I got about four out of that.

20 A. Oh, I thought that was one but okay.

21 Q. Well, I got IED attacks, perpetrators----

22 A. Okay.

1 Q. ----so with respect to those specific areas, there was--you
2 never vetted those areas against any known set of data, right?

3 A. Other than knowing that the
4

5 Q. Right.

6 A. That was the basis for my knowledge--my expertise on that.

7 Q. Just you--yeah, just your experience?

8 A. As well as experience and what we know the
9
10

11 Q. With respect to each estimate, you indicated that you were
12 confident in your estimates. Is that right?

13 A. I was----

14 Q. Do you recall doing that?

15 A. I am confident because I went low----

16 Q. You could be wrong----

17 A. ----of what I----

18 Q. ----though?

19 A. I--it is my opinion.

20 Q. But you could be wrong?

21 A. It's my opinion.

22 Q. Right. And sometimes opinions are wrong, right?

1 A. Is that a question?

2 Q. It is. Are sometimes opinions wrong, Mr. Lewis?

3 A. Yes.

4 Q. Especially when it is the first time you have ever done it
5 or your first time you've ever rendered an opinion?

6 A. An opinion like this. This is the first time.

7 Q. Right and sometimes when we are inexperienced we don't
8 necess--that's when we are prone to a mistake?

9 A. I would say my experience isn't based on giving opinions.
10 My experience is based on the information that is being--that we are
11 talking about here. That is my experience.

12 Q. Right.

13 A. Saying yes or no; left or right; I don't need experience in
14 that. It is based on what I know and what I've done for almost 30
15 years.

16 Q. Right. Although what you've done for almost 30 years isn't
17 give opinions, is it?

18 A. No. Well, maybe to some people but unsolicited.

19 Q. Let's go back to the What
20 specific information did you find in the

21

1 A. The thing that concerned me the most on the information
2 that was in there was the reports of the intel value that we were

3
4
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7
8 Q. Can you remember one
9 that you reviewed?

10 A. Not at the moment. No.

11 Q. So you can't even--so from
12 you can't remember bit of data?

13 A. Specific--no. Would you like to refresh my memory? If you
14 have a question about one, I can review one and you can ask me why I
15 felt that way about it.

16 Q. Okay. Thank you for laying that out for me, Mr. Lewis. I
17 don't want to refresh your memory. I just want to know if sitting
18 here you could--you had an independent memory of any
19 and you said you didn't. Is that right?

20 A. That is correct.

1 Q. And I further asked you if you could remember any specific
2 fact in and you said you couldn't. Is
3 that right?

4 A. Then that would be a wrong answer. A specific fact, I can
5 tell you--no, I cannot; a specific fact. I can tell you what is in
6 the reports that would be of interest to a foreign intelligence
7 service.

8 Q. Right. Let's talk about the cables. Again, and we will
9 just sort of go through each one of these topics. Can you remember a
10 specific fact that you found in the NET-CENTRIC Diplomacy database, a
11 specific fact?

12 A. This is the State Department cables, right?

13 Q. State Department stuff, yes.

14 A.

15

16 Q. Sure.

17 A. .

18 Q. What I am looking for is a specific fact. Just not that--
19 that was very general or that--my opinion about that answer, Mr.
20 Lewis, was it was general. What I am looking for is a specific fact.

21 A. Without reviewing any of those documents, remembering a
22 specific fact sitting here; no, sir.

1 Q. How about in the CIDNE-I database. Can you remember a
2 specific fact; the CIDNE-I database?

3 A. I guess I am getting hung up on the word "fact". Do you
4 mean a specific detail from a specific report or the fact that
5 all in those documents; those are both facts to
6 me.

7 Q. Okay.

8 A. Which would change my answer--previous couple of answers---
9 -

10 Q. Give me one TTP then?

11 A. ----on that.

12 Q. I am sorry to interrupt you, Mr. Lewis. Did--were you able
13 to answer that question?

14 A. No. I was just going to say when I was thinking about when
15 you said a "fact", to me a fact would be that there is information of
16 intelligence value in that report. That is a fact. If you were
17 asking me

18 No, I don't think I could tell you that, Major Hurley.

19 Q. Can you tell me----

20 A. But I can tell you that specifically in CIDNE-I, which you
21 just said, one particular fact
22

1
2 yes, by a fact, I know that is in a CIDNE-I report
3 cause I read that. Do I remember specifically what town, what day it
4 was, those types of details; no, sir. I can't do that.

5 Q. You don't remember or the report didn't indicate what we
6 would use. Did it Mr. Lewis?

7 A. Um----

8 Q. The report indicated what is used on a particular day. Is
9 that right?

10 A. Yes.

11 Q. Right. That is what it said. It didn't say what
12 it just said that on this day, with
13 this attack, we used these things. Is that right?

14 A. Yes, sir. But as a compilation of all those things,
15
16
17
18

19 I mean, those are things that are all contained in
20 there that it is almost like a living document, if you will, of
21 things that were happening and written by those people on the ground
22 at that time. It is a snapshot in time,

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But as----

Q. It is how we responded, right? A SIGACT talks about an event in the past. Correct?

A. Yes, sir. It's a report. Yeah.

Q. Right. A report about what happened, right?

A. Yes, sir.

Q. Do you accept that there is a difference between

A. Do I see a difference there?

Q. Yes.

A. No, sir.

Q. You don't?

A. How that--I think--the report of what happened that

Q. No. It's----

A. I mean, he we--how we are going to--

I don't see the difference there. I

am sorry.

1 Q. Sir, you don't see the distinction between doctrine and a
2 historical record?

3 A. Yes. I see the difference between the two. Yes, sir.

4 ADC[MAJ HURLEY]: Okay. Thank you. One moment, Mr. Lewis
5 and, ma'am, if I may have a moment?

6 MJ: Go ahead.

7 [The defense counsel conferred.]

8 ADC[MAJ HURLEY]: Ma'am, that concludes the examination. What
9 we would do is move to strike Mr. Lewis' testimony with regards to
10 evaluation. That motion would be based on M.R.E. 702. It doesn't
11 have a specific factual basis and it is not done on reliable
12 principles and methods.

13 MJ: All right.

14 I've already ruled on that motion but I understand why
15 you're doing it again after the foundation.

16 It is denied.

17 ADC[MAJ HURLEY]: Thank you, ma'am.

18 MJ: Redirect?

19 TC[MAJ FEIN]: No, Your Honor.

20 MJ: All right.

21 Temporary or permanent excusal?

22 TC[MAJ FEIN]: Temporary excusal, Your Honor.

1 MJ: All right.

2 Mr. Lewis, you are temporarily excused. Once again, please
3 don't discuss your testimony or knowledge of the case with anyone
4 other than counsel or the accused while the trial is still going on.

5 Now my understanding is we are going to have another
6 session and recall this witness.

7 Is that correct?

8 TC[MAJ FEIN]: No, Ma'am.

9 MJ: At 3:30?

10 TC[MAJ FEIN]: Well, actually, ma'am, yes. Well if we can go
11 into a recess and the United States will talk to the defense to have
12 a proposal upon what we should do for the open record.

13 MJ: All right.

14 Well, at this point, you are excused.

15 TC[MAJ FEIN]: Sorry, Your Honor.

16 WIT: Thank you, ma'am. So am I excused-excused or----

17 TC[MAJ FEIN]: Sir, if you could just wait in the back office---

18 -

19 WIT: I'm--I'm----

20 TC[MAJ FEIN]: We will let you know what that really means.
21 [The witness was temporarily excused, duly warned, and exited the
22 courtroom.]

1 MJ: All right.

2 Anything we need to address before we recess the court?

3 TC[MAJ FEIN]: No, Ma'am. Other than if we could ask the
4 Bailiff or Mr. Prather to notify the public that maybe we will
5 restart at 1600 with the open session to give us adequate time to
6 talk about the next steps forward.

7 MJ: All right.

8 Defense, any concerns with that?

9 CDC: No objections, Your Honor.

10 MJ: Okay.

11 We will be at recess then until 1600.

12 [The court-martial recessed at 1525, 2 July 2013.]

13 [END OF PAGE]

1 [The court-martial was called to order at 1608, 2 July 2013.]

2 MJ: Court is called to order. Let the record reflect all
3 parties present when the Court last recessed are again present in
4 court. The Court noticed that -- notices that the Court has been
5 opened. This is an open session and there are members of the gallery
6 present. Major Fein?

7 TC[MAJ FEIN]: Yes, ma'am. The court security officer completed
8 his open hearing checklist and that will be filed in allied documents
9 with the post-trial allied documents.

10 MJ: All right. Major Fein, have any exhibits been introduced
11 during the closed portion of the session?

12 TC[MAJ FEIN]: No, ma'am, not during this last session. However,
13 the parties have agreed upon an unclassified summary of Mr. Lewis's
14 testimony that can be read on to the record.

15 MJ: Major Hurley, is that correct?

16 ADC[MAJ HURLEY]: Yes, ma'am, it is.

17 MJ: All right. Go ahead.

18 TC[MAJ FEIN]: Ma'am, Mr. Lewis testified as a
19 counterintelligence expert regarding the value of U.S. Government
20 information. Specifically Mr. Lewis opined on the value of
21 information contained within the CIDNE-I, CIDNE-A Significant
22 Activity databases, the value of information contained within State
23 Department NCD database, the value of information contained within

1 the JTF GTMO Detainee Assessment Database, and the value of
2 information contained within the Global Address List. Mr. Lewis was
3 cross-examined on his basis for knowledge on valuing the information.

4 MJ: All right. Thank you. Government ready to proceed?

5 TC[MAJ FEIN]: Yes, ma'am. Your Honor, the United States moves
6 to admit Prosecution Exhibit -- what has been marked as Prosecution
7 Exhibit 46 for Identification as Prosecution Exhibit 46. This is a -
8 - This prosecution exhibit for identification, ma'am, was referenced
9 in Prosecution Exhibit 181 Alpha which is a Stipulation of Expected
10 testimony for witness Number 29.

11 MJ: Any objection?

12 CDC[MR. COOMBS]: No objection, Your Honor.

13 MJ: All right. Prosecution Exhibit 46 for Identification is
14 admitted.

15 TC[MAJ FEIN]: I'm sorry, ma'am. I should have mentioned this
16 before, other housekeeping. The transcription of Mr. Lewis's closed
17 testimony pursuant to Appellate Exhibit 550, the United States will
18 start transcribing it and will work through the procedures set forth
19 by the court in order to provide an unclassified redacted copy as
20 soon as possible. As an update, Your Honor, on the previous closed
21 session for Agent Shaver, that copy has been reviewed by both parties
22 and the pre-authenticated version has been given to the different
23 equity holders, and the United States anticipates that will be

1 returned by Friday. And once it is returned because we won't be in
2 session on Friday it will be posted to the Department of Army FOIA
3 reading room for the general public and media to access the
4 unclassified portions of that closed session.

5 MJ: All right. Any other housekeeping matters we have to
6 address?

7 TC[MAJ FEIN]: No, ma'am.

8 MJ: Is the government ready to proceed?

9 TC[MAJ FEIN]: Yes, ma'am, the government is ready to proceed,
10 and the government rests.

11 MJ: All right. Has the government looked through the
12 prosecution exhibit list? All right. So all the exhibits you wanted
13 to admit are admitted?

14 TC[MAJ FEIN]: Yes, ma'am. And just to avoid any confusion,
15 there are some exhibits that are, unfortunately have been double
16 marked, it's different variations. We've already discussed this at
17 times on the record. And that was because it was marked one version
18 for opening statements, and then a different version was actually
19 admitted, but the government has reviewed the prosecution exhibit
20 list and the evidence offered has been admitted that the United
21 States intends to use.

1 MJ: Please, the parties and the court reporter, let's get
2 together and make sure that all of the exhibits are accurately
3 reflected in the record.

4 TC[MAJ FEIN]: Yes, ma'am. And just as a point of
5 Clarification, also, ma'am, the United States has not presented nor
6 does it intend to present, since the government rested, the evidence
7 that was offered during the bill of particulars of a classified
8 enemy. That evidence was not presented and the government will not
9 be presenting it.

10 MJ: All right. So in that case then the next phase of these
11 proceedings will be the defense case in accordance with the court
12 calendar, and the parties have arranged travel for the witnesses. We
13 will be in recess until Monday, the 8th, and the defense will be
14 starting its case at 0930. If there will be any defense motions for
15 a finding of not guilty as to any of the offenses charged, they will
16 be filed in writing. I believe we've come up with a tentative
17 schedule, it will be by Thursday. The government will then tell the
18 court once they've reviewed it, depending on how extensive it is, how
19 long they will want to require a response. The parties talked in our
20 R.C.M. 802 conference and I don't know at this point, depends on the
21 motion itself, whether I'll be able to rule on it before the 8th or
22 not. In the event I don't rule on it by the 8th, does the defense
23 have any objection to beginning their case?

1 CDC[MR. COOMBS]: No, Your Honor.

2 MJ: So, the plan will be then, we will start at 0930 on the 8th

3 of July and proceed with the defense case. And is there anything

4 else we need to address before we recess the Court?

5 TC[MAJ FEIN]: May I have a moment, Your Honor?

6 MJ: Yes.

7 TC[MAJ FEIN]: No, ma'am.

8 CDC[MR. COOMBS]: Nothing from the defense, ma'am.

9 MJ: Court is in recess until 0930 on 8 July.

10 [The court-martial recessed at 1615, 2 July 2013.]

11 [END OF PAGE]

1 [The court-martial was called to order at 1017, 8 July 2013.]

2 MJ: Court is called to order. Major Fein please account for
3 authorities.

4 TC[MAJ FEIN]: Yes, ma'am. Your Honor, all parties when the
5 Court last recessed are again present with the following exceptions.
6 Mr. Robertshaw, court reporter, is absent. Mr. Chavez is present.
7 Captain Morrow is absent. Captain Overgaard is present.

8 Also, Your Honor, as of 0930 this morning, there was 21
9 members of the media in the media operation center, one stenographer,
10 three media planned in the courtroom, 25 spectators in the courtroom,
11 and 36 spectators in the overflow trailer. The theater is being
12 prepared in case it's needed for this morning.

13 MJ: All right. Thank you.

14 There have been a number of filings that have been added to
15 the record. Major Fein, would you like to address those?

16 TC[MAJ FEIN]: Yes, ma'am. Ma'am, at this point all Appellate
17 Exhibits, first Appellate Exhibit 593 is the defense's motion for
18 directed verdict for Charge II Specification 4, 6, 8, and 12, the 641
19 offenses. Appellate Exhibit 594, defense motion for directed verdict
20 for Charge I, the Spec of Charge I, Charge I, Article 104. Appellate
21 Exhibit 595, defense's motion for directed verdict for the 1030
22 offense. Appellate Exhibit 596, defense motion -- or directed --
23 motion for directed verdict for Charge II Specification 16.

1 Appellate Exhibit 597, United States e-mail to the Court requesting
2 this Thursday for time to respond to those four motions. And
3 Appellate Exhibit 598, the defense's ordered witness list.

4 MJ: All right. Thank you.

5 For the record, as Major Fein just described the defense
6 filed four motions for finding a not guilty under Rule for Court-
7 Martial 917. Those are Appellate Exhibit 593 through 596. Those
8 were filed on the 4th of July. The government via e-mail requested
9 until Thursday the 11th of July to respond to those motions. The
10 Court, also via e-mail, granted the government's request to respond
11 by Thursday and advised the Court -- or the parties to advise the
12 Court if they would seek oral argument with respect to these motions.

13 The Court held an R.C.M. 802 conference with the parties
14 this morning to discuss the way forward today. We have a list of
15 defense witnesses and we're going to proceed with the defense's case.
16 I -- the Court -- the government is scheduled to advise me at a
17 recess later today whether the government can be prepared to respond
18 to the defense motions by close of business Wednesday, as opposed to
19 Thursday. So that -- at this point the government has until
20 Thursday, but that is an issue that remains up in the air, depending
21 on how the proceedings shake out and how long the particular
22 witnesses take.

1 All right. Government, what is the status of the
2 transcription in the classification reviews of the closed
3 proceedings?

4 TC[MAJ FEIN]: Ma'am, the United States has had two closed
5 proceedings, well three proceedings, one was a continuation over two
6 days, at this point the first tran -- the first transcription for
7 Special Agent Shaver has been completed and is at the relevant
8 government agencies to have the classification review completed. It
9 should be finished this morning and during the next recess I'll
10 receive an update on that. The second and third sessions for Mr.
11 Danny Lewis those have been completed, at least the initial
12 transcription have been and both parties still need to review them
13 under the Court's previous order, in order to present an errata
14 presented to the Court and then those will go off for classification.
15 And the United States intends to provide those copies to the relevant
16 trial counsel and defense by lunch today.

17 MJ: All right. Defense, you've received a copy of the
18 government's judicial notice filing? Any issue's with that?

19 CDC[MR. COOMBS]: No issues, ma'am.

20 MJ: Is there anything else we need to address before we proceed
21 today, with the defense case on merits?

1 TC[MAJ FEIN]: Yes, ma'am. I believe the Court wanted to put on
2 the record the fact that it would only consider the government's case
3 in chief with the 917 motions.

4 MJ: All right. Thank you for reminding me. That was another
5 issue that was discussed in the R.C.M. 802 conference. The defense
6 filed their motions for finding of not guilty. In order to have
7 clarity for both sides the Court will consider only evidence
8 presented in the government's case in chief on the merit with the
9 respect to the defense's 917 motion -- or both motions. Are both
10 parties happy with that?

11 TC[MAJ FEIN]: Yes, Your Honor.

12 CDC[MR. COOMBS]: Yes, ma'am.

13 MJ: Is there anything else we need to address?

14 TC[MAJ FEIN]: No, ma'am.

15 CDC[MR. COOMBS]: No, Your Honor.

16 MJ: All right. Mr. Coombs?

17 CDC[MR. COOMBS]: Yes, Your Honor. The defense would move into
18 evidence what's been marked as Defense Exhibit Kilo 1 and Kilo 2 for
19 Identification, into evidence as Kilo 1 and Kilo 2.

20 MJ: All right. I'm looking at Defense Exhibit Kilo 1 for
21 Identification and Defense Exhibit Kilo 2 for Identification. Does
22 the government have any objection to either one of these?

23 TC[MAJ FEIN]: No, ma'am.

1 MJ: All right. Defense Exhibit Kilo 1 and 2 are admitted.

2 CDC[MR. COOMBS]: The defense would also move into evidence

3 Defense Exhibit Lima for Identification into evidence as Defense

4 Exhibit Lima.

5 MJ: All right. I'm looking here at Defense Exhibit Lima for

6 Identification, it's entitled Prosecution Exhibit 15, transcript of

7 video. Is this the same thing as Prosecution Exhibit 15 or something

8 different?

9 CDC[MR. COOMBS]: It is the transcript of Prosecution Exhibit

10 15, Your Honor. 15 is the Apache helicopter video.

11 MJ: All right. And this is the -- is this a transcript that

12 both sides agreed to when we were looking at the judicial notice

13 motions?

14 CDC[MR. COOMBS]: Yes, Your Honor.

15 MJ: All right. Government, any objection?

16 TC[MAJ FEIN]: No, ma'am.

17 MJ: All right. Defense Exhibit Lima for Identification is

18 admitted.

19 CDC[MR. COOMBS]: Defense would move into evidence Defense

20 Exhibit Mike for Identification as Defense Exhibit Mike.

21 MJ: All right. Government, any objection to Defense Exhibit

22 Mike for Identification?

23 TC[MAJ FEIN]: No, ma'am.

1 MJ: Defense Exhibit Mike for Identification is admitted.

2 CDC[MR. COOMBS]: Finally, the defense would move into
3 evidence Defense Exhibit Oscar for Identification into evidence as
4 Defense Exhibit Oscar.

5 MJ: All right. Government, any objection?

6 TC[MAJ FEIN]: No, ma'am.

7 MJ: Defense Exhibit Oscar for Identification is admitted.

8 CDC[MR. COOMBS]: Ma'am, the defense at this point would
9 request permission to play Prosecution Exhibit 15 in request that the
10 Court look at Defense Exhibit Kilo 2 and Defense Exhibit Lima as the
11 video's being played. The video is approximately 39 minutes long, we
12 would be playing just the first 20 minutes of it, Your Honor.

13 MJ: So you want me to look at Kilo 2?

14 CDC[MR. COOMBS]: Yes, Your Honor.

15 MJ: While the video is playing?

16 CDC[MR. COOMBS]: Yes, Your Honor. And if the -- if there's
17 anything in the video that the Court cannot understand based upon
18 volume of what not, Defense Exhibit Lima is the transcript for the
19 video, ma'am.

20 MJ: Proceed.

21 TC[MAJ FEIN]: Your Honor?

22 MJ: Yes?

1 TC[MAJ FEIN]: United States -- there's two issues. First
2 United States would object to what the defense is offering to play,
3 this is motive evidence. If that's their purpose the United States
4 objects. Based off there's no foundation, there's no other evidence
5 on the record that would allow this to be used for that purpose.

6 MJ: All right. What's the relevance?

7 CDC[MR. COOMBS]: Your Honor, the relevance of this is that
8 the government has charged under Charge -- Specification 2 of Charge
9 II the video, the 793 Echo Charge. We previously requested that the
10 Court take judicial notice that Mr. Finkel's book quotes the video
11 verbatim on this issue of closely held. The Court indicated that
12 that would be a proper matter to present to the trier fact and not
13 for the Court to take judicial notice of. So at this point what
14 we're trying to do is play Prosecution Exhibit 15 so that the Court
15 can follow along with Mr. Finkel's book and also the verbatim
16 transcript in order for the trier fact to make a determination
17 whether or not Mr. Finkel's book quotes the video verbatim.

18 MJ: All right. Any objection to that basis?

19 TC[MAJ FEIN]: No, ma'am. I -- the second issue, ma'am, is the
20 United States would also ask the defense play the entire 39 minute
21 video. Essentially, similar under the Rule 106, that it would more
22 -- benefit the Court to see the entire video that was charged and not
23 just excerpts of the video.

1 MJ: All right. We -- we're - Mr. Coombs, were you planning on
2 playing a certain amount from start to finish and then not the rest,
3 or ----

4 CDC[MR. COOMBS]: Yes, ma'am.

5 MJ: ---- pieces along the way?

6 CDC[MR. COOMBS]: I was planning on playing just the first 20
7 minutes and the reason why the defense was doing that was Mr.
8 Finkel's book ends when he's quoting, in defense's position, when
9 he's quoting the video, he ends at the 20-minute mark. He doesn't
10 quote or refer to anything past that. So from the defense's position
11 anything past 20 minutes was not relevant for our purposes of arguing
12 that the video was not closely held. Because the only thing that's
13 quoted is the -- within the first 20 minutes. If the government
14 wants to watch the entire 39 minutes and the Court wants to do so as
15 well, defense has no problem with that.

16 MJ: All right. Under the Rule of Completeness then are you
17 looking in -- are you asking this under M.R.E. 106?

18 TC[MAJ FEIN]: Yes, ma'am.

19 MJ: All right. So you want the video played in its entirety
20 during the defense direct as opposed to you playing the second part
21 on your cross?

22 TC[MAJ FEIN]: Yes, ma'am.

23 MJ: All right. Go ahead ----

1 TC[MAJ FEIN]: Or in rebuttal -- or -- yes, ma'am. Also the
2 Court will only have to ask -- or watch it once, so ----
3 MJ: All right. Just play the whole thing.
4 CDC[MR. COOMBS]: Yes, Your Honor.
5 **[The video was played in its entirety for the court.]**
6 CDC[MR. COOMBS]: Ma'am, the defense would request a 10-minute
7 comfort break.
8 MJ: All right. Any objection?
9 TC[MAJ FEIN]: No, ma'am.
10 MJ: Court is in recess until a quarter after 11.
11 **[The court-martial recessed at 1108, 8 July 2013.]**
12 **[The court-martial was called to order at 1126, 8 July 2013.]**
13 MJ: Please be seated. Court is called to order. Let the record
14 reflect all parties present when the court last recessed are again
15 present in court.
16 Over the recess I was advised that the media feed was not
17 working for the first 20 minutes approximately of the session that
18 was last held and some of the video that was played was not
19 broadcasted in the media center; is that correct?
20 TC[MAJ FEIN]: Yes, ma'am. United States will make available
21 during the lunch recess, Your Honor, a computer with the video with
22 Defense Exhibit -- the Defense Exhibit available for members of the
23 media to view.

1 MJ: The video, was that a Prosecution Exhibit?

2 TC[MAJ FEIN]: I'm sorry, it was PE 15 that was played.

3 MJ: All right. Any objection?

4 CDC[MR. COOMBS]: No objection, Your Honor.

5 MJ: All right. Is there anything else we need to address

6 before we proceed?

7 TC[MAJ FEIN]: No, ma'am.

8 CDC[MR. COOMBS]: Defense calls CW2 Joshua Ehresman.

9 **CHIEF WARRANT OFFICER 2 JOSHUA EHRESMAN, U.S. Army, was called as a**

10 **witness for the defense, was sworn, and testified as follows:**

11 **DIRECT EXAMINATION**

12 **Questions by the assistant trial counsel [CPT OVERGAARD]:**

13 Q. And for the record, you are CW2 Joshua Ehresman of

14 Headquarters and Headquarters Battalion ----

15 A. Yes, ma'am.

16 Q. ---- 2nd Infantry Division, Camp Red Cloud, Korea?

17 A. Yes, ma'am.

18 **Questions by the civilian defense counsel [MR. COOMBS]:**

19 Q. Chief Ehresman, what is your military specialty?

20 A. I'm an intelligence analyst technician, sir.

21 Q. How long have you had that MOS?

22 A. I've been a warrant officer for about 7 years, sir.

1 Q. What was your highest enlisted rank before you became a
2 warrant officer?

3 A. Sergeant First Class, sir.

4 Q. When were you a member of 2nd BCT, Mountain Division, the
5 S-2 Section?

6 A. From early 2008 to late 2011, sir.

7 Q. Did you deploy with your unit to Iraq?

8 A. Yes, sir.

9 Q. And what was your duty position actually before the
10 deployment to Iraq?

11 A. The fusion -- fusion tech, sir.

12 Q. And can you explain what that was?

13 A. I was overall responsible for the products that come out of
14 our shop, sir.

15 Q. And this was the intelligence products?

16 A. Yes, sir.

17 Q. And when did you actually deploy to Iraq?

18 A. In November of 2009, sir.

19 Q. And why were you deploying after the -- your unit?

20 A. Because I was going through surgery. I had surgery on both
21 of my ankles and it prohibited me from leaving when they all left.

22 Q. Where did you work once you arrived in Iraq?

23 A. In the fusions.

1 Q. I want to ask you, you the fusion session -- section, was
2 that in the T-SCIF?

3 A. Yes, sir.

4 Q. I want to ask you a few questions about the T-SCIF
5 operations during the deployment, okay?

6 A. Okay, sir.

7 Q. Did the T-SCIF have CDs in it?

8 A. Yes, sir.

9 Q. What were those CDs being used for?

10 A. For passing information -- the products that we developed
11 were too big to e-mail to each other and to pass to our Iraqi
12 counterparts or whatnot, so we would have to put them onto CDs and
13 transport them by hand.

14 Q. And were these CDs -- if you're putting products on that,
15 were you putting classified information on the CDs?

16 A. Yes, sir.

17 Q. Were these CDs always appropriately marked?

18 A. Not always, sir.

19 Q. And why not?

20 A. I don't know.

21 Q. What would happen to the CDs after you burned information
22 down on them?

1 A. We would write on it what we had on that infor -- what we
2 put on that CD and when we were done with it we destroyed or recopied
3 over.

4 Q. Were Soldiers in the S-2 authorized to burn information
5 from their DCGS-A computers to CDs?

6 A. Yes, sir.

7 Q. And why would an analyst do that?

8 A. Well, like we was talking about with the size of the
9 products, sometimes we had to put them on that to transport them to
10 another computer just in case it crashed or we had to go to a
11 different location or something to use that information, sir.

12 Q. Did you ever have any problems with the servers going down?

13 A. Yes, sir.

14 Q. And was it common for analysts to burn information in order
15 to have it on a CD to have it on a CD for their ----

16 A. Yes, sir.

17 Q. ---- own personal library?

18 A. Yes, sir.

19 Q. Was that a permitted practice?

20 A. Yes, sir.

21 Q. Was it also common for an analyst to save information down
22 from the hard drive down to their individual computer?

23 A. Yes, sir.

1 Q. By either saving onto the computer's hard drive or saving
2 onto a CD, what did that enable you to do?

3 A. Well, if your computer crashed or -- it was like a save, an
4 automatic save. If something went wrong, the server went down, or
5 the computer crashed, you had your information and didn't lose it all
6 and have to start from scratch. It usually took 30 minutes to 5
7 hours to download one item. So it was terrible to try to do it
8 again. It was time, was not there.

9 Q. So having on it CD that enabled you not to have to rely
10 upon the server?

11 A. Yes, sir, it was more expedient.

12 Q. Did the S-2 Section ever have any problems with the DCGS-A
13 computers crashing?

14 A. Yes, sir, all the time.

15 Q. How often would they crash?

16 A. All the time. I mean, some -- like the one that Mr.
17 Manning used, it crashed at least daily.

18 Q. What about other DCGS-A computers?

19 A. All of in them did, sir. Every single DCGS-A crashed at
20 least once every other day.

21 Q. Did you work off of a DCGS-A computer?

22 A. Yes, sir.

23 Q. How many times did your DCGS-A crash?

1 A. Mine crashed at least once every two or three days.

2 Q. When an analyst's laptop would crash, what would they do at
3 that point?

4 A. We would have to move to another system until we could get
5 that one either fixed or running back up, sir.

6 Q. And how long would it usually take to get the computer
7 fixed or working off another laptop?

8 A. Depending on what was wrong with it, sometimes we had to
9 send them back to -- to the FOB -- the main -- VBC, we'd have to send
10 to VBC and sometimes it could be fixed by Mr. Milliman or somebody
11 local. Sometimes it just needed to cool off.

12 Q. Would you always get your information back after your DCGS-
13 A crashed?

14 A. No, sir.

15 Q. Have you had any experience where you lost information ----

16 A. Yes, sir.

17 Q. ---- because of a DCGS-A computer crashing?

18 A. Yes, sir.

19 Q. If an analyst wanted to, could they burn information down
20 onto a CD in order to avoid losing information in the event that
21 their computer might crash?

22 A. Yes, sir.

23 Q. Was that a permitted practice ----

1 A. Yes, sir.

2 Q. ---- In the S-2 Section?

3 A. Yes, sir.

4 Q. And, Chief, I know -- you're doing fine. Have you ever

5 testified before?

6 A. Yes, sir.

7 Q. Okay. If you could just let me complete my entire question

8 -- and you're doing fine, but occasionally you have a, "Yes, sir,"

9 before complete my question. Okay?

10 A. Yes, sir.

11 Q. All right. Thank you, Chief.

12 Were there any rules on what an analyst could or could

13 not burn down onto a CD?

14 A. No, sir.

15 Q. So if it was on a -- on the T-drive, for example -- what

16 was a T-drive, by the way?

17 A. That was the shared drive, sir.

18 Q. If it was on the T-drive, could an analyst burn anything

19 they wanted from the T-drive onto a CD?

20 A. Yes, sir.

21 Q. And what about the SIPRNET, could an analyst burn something

22 down from the SIPRNET onto a CD?

23 A. Yes, sir.

1 Q. Was it common for analysts to do so?

2 A. Yes, sir.

3 Q. Do you recall if the S-2 Section ever put out any rules or
4 guidance as to what you could or could not burn down onto a CD?

5 A. No, sir.

6 Q. I want to ask you a few questions now about how the S-2
7 Section was divided up during the deployment. Okay?

8 A. Yes, sir.

9 Q. How many analysts did you have working in the T-SCIF?

10 A. In the T-SCIF completely? I think we have three -- five --
11 I think it was nine or ten, sir ----

12 Q. And ----

13 A. ---- enlisted

14 Q. Did you have a current ops and a future ops?

15 A. Yes, sir.

16 Q. And where was the current ops located?

17 A. Current ops was out in the TOC area where everything was
18 going on and the SCIF was in the back.

19 Q. And I guess in the back, was that where the future ops was?

20 A. Yes, sir.

21 Q. And what did analysts work on when they were working in the
22 future ops?

1 A. In the future ops they worked on establishing trends and
2 identifying patterns.

3 Q. What section did PFC Manning work in?

4 A. In future ops, sir.

5 Q. Were the products that PFC Manning was working on, were
6 they used for real-time on the battlefield decisions or were they the
7 used for kind of establishing trends for future operations?

8 A. Both, sir.

9 Q. How were they used for real-time information?

10 A. Well, if we had something happen that -- an IED or some
11 kind of action happens, the troops in contact, then when we establish
12 something through -- off of our pattern analysis we could give that
13 to the current ops and let them know that, hey, this is probably
14 going to happen because of what we've seen in the past.

15 Q. Okay. So that would be something that happens on the
16 battlefield, the TOC alerts you to it, and then you would do some
17 research on it?

18 A. Yes, sir.

19 Q. And what about for future ops, how would his work products
20 be used for those?

21 A. So we could better establish TTPs, or tactics, techniques,
22 and procedures to alert Soldiers that were going out and leaders that

1 were going out to better give them a better understanding of the
2 battlefield, sir.

3 Q. Okay. How many shifts did the T-SCIF run?

4 A. When I first got there, there was two. There was a day and
5 a night shift, sir.

6 Q. And do you recall -- and I know it's been a little while,
7 but do you recall the general hour time periods for the day and night
8 shift?

9 A. I'm pretty sure it was 09 to 21 and then 21 to 09. I think
10 that's what it was, sir.

11 Q. So 09 and 21 the day shift and 21 to 09 the night shift?

12 A. Yes, sir.

13 Q. And how many analysts, I guess, were on each shift?

14 A. We had two -- five enlisted and one officer, maybe one NCO
15 on each shift, sir.

16 Q. Do you recall what shift PFC Manning was on when they --
17 deployment started?

18 A. Night shift, sir.

19 Q. And who were his supervisors on the night shift?

20 A. While we were deployed his supervisor was Specialist
21 Padgett was his immediate supervisor.

22 Q. Did you have a NCO on the night shift?

1 A. No. Well, we had -- Master Sergeant Adkins was working

2 both, but I don't remember anybody else being back there for ----

3 Q. Did you have an OIC on the night shift?

4 A. We did at first we had -- I think it was Captain Keay was
5 the original OIC at night, but after the chain of command got shifted
6 up and when Major Clausen had to leave and we had to switch that up a
7 little bit.

8 Q. Do you have if an officer replaced him?

9 A. No one replaced him directly, sir.

10 Q. How long -- and I know again this is a while ago, but how
11 long was Captain Keay the OIC on the night shift?

12 A. Maybe 2 months, sir.

13 Q. Going back to the NCOIC, the night shift NCOIC, what were
14 their responsibilities?

15 A. Just to make sure that the direction that was provided to
16 them at shift change was conducted and then make sure that the
17 Soldiers got chow and their necessities, sir.

18 Q. At least for the night shift -- did I understand you
19 correctly that it was a specialist and not an NCO?

20 A. I know there was an NCO there at first, but somewhere in
21 that -- where we had to go through a lot of changes we lost the NCO
22 and Specialist Padgett had to step up and be the NCO.

1 Q. With regards to the night shift analyst, what were they
2 generally tasked to do?

3 A. Our catch up work basically, sir. They were -- they had to
4 provide the stuff that we couldn't attend to during the day because
5 of the optempo.

6 Q. Can you give the Court an example of what that would be?

7 A. A data mine or consolidation of a specific attack or a
8 specific events in a certain area by a certain group.

9 Q. Do you recall what work specifically PFC Manning did on the
10 night shift?

11 A. He did that, sir.

12 Q. Did he ever do anything dealing with the Iraqi elections?

13 A. Well, for trends, yes, sir. For trends of the past
14 elections, yes, he gathered that.

15 Q. And, again, any in kind of a general unclassified description,
16 what would he would be doing on the night shift?

17 A. For the elections or?

18 Q. For the elections, yes.

19 A. For elections, sir, we would find trends that happened
20 during the last elections and see if we could set up something to
21 identify the people that were going to participate in this election
22 so they would have some kind of idea of what might happen or
23 indicators.

1 Q. And if he wasn't working on that did he ever do anything
2 dealing with counter-IED?

3 A. Yes, sir.

4 Q. And, again, in a general unclassified description, what would
5 he be doing with regards to counter-IED?

6 A. Techniques and procedures, tactics, techniques, and
7 procedures.

8 Q. So as he's doing that, can you describe in general what
9 that product might look like when he was done and turns it in?

10 A. Yeah -- well we had density plots. We had maps. We had
11 examples of things that had happened, I mean, there's a myriad of
12 things that we did with predicting what we thought would happen or
13 how it would happen, sir.

14 Q. And you said density plots, what are those?

15 A. Those are -- and so basically it's a map of the area and it
16 would have colors from the intensity or the amount of attacks that we
17 had in that specific area, and that's a density plot. So if it was
18 -- if there was a lot of attacks in that center -- that specific area
19 it would be red and the lighter the colors got back to green would
20 mean there would no attacks. So that would be a density plot.

21 Q. And you had earlier said the term data mining, what is data
22 mining?

1 A. That's pulling everything you can from every bit of
2 intelligence assets you've got to help build your product, sir.

3 Q. Would you expect intel analyst to data mine?

4 A. Yes, sir.

5 Q. And why is that?

6 A. Because you can't -- you can't go off one source of
7 intelligence to predict something to happen. You have to have other
8 stuff that indicated that it's going to happen. You can't just
9 guess.

10 Q. And where do analysts obtain their information that they're
11 data mining?

12 A. Everywhere, sir. We got them on the SIPR, the T-drive, we
13 got them from wherever we could. The open source, anything.

14 Q. And correct me if I'm wrong, but when I think of the term
15 data mining and what you just described, is basically an analyst
16 looking at anything and everything they can, any location, just to
17 kind of figure out would this perhaps be relevant to what I'm doing.
18 Is that correct, or would you provide a different definition for it?

19 A. Yes, sir.

20 Q. Yes, sir, that's ----

21 A. That's correct. You're trying to find out yes or no this
22 is going to happen, and, yes, this is how it's happened and this is
23 why it's happening. So you have to confirm or deny your assessment.

1 Q. Now with regards to I guess when you're doing this was the
2 any guidance put out that if your you're data mining you can do
3 everything but go to this particular area on SIPRNET?

4 A. No, sir.

5 Q. So were there any restrictions on what you would data mine
6 on the SIPRNET?

7 A. No, sir.

8 Q. Was it common for a Soldiers or analysts to data mine?

9 A. Yes, sir.

10 Q. Did analysts also use open source information?

11 A. Yes, sir.

12 Q. And what is open source information?

13 A. That's regular internet, sir.

14 Q. How would an analyst use an open source?

15 A. When you get on and check out the web pages or you can
16 check out local newspaper or it's anything that doesn't come through
17 our Secret or higher confidential webs.

18 Q. And, again, in kind of a general description, how would
19 open source information help your work products?

20 A. Sometimes some of the media had information that we didn't
21 find out through our patrols or something. We could get patrol
22 report and they would have outside information or a different point

1 of view from what happened. So we would use that in our assessment,
2 sir.

3 Q. And were analysts encouraged to use open source information
4 for their work products?

5 A. Yes, sir.

6 Q. Was there any sort of restriction placed out by the S-2
7 Section of you can go to every place besides these sites on open
8 source?

9 A. There was no restriction, sir.

10 Q. Did analysts ever use the CIDNE Database?

11 A. Yes, sir.

12 Q. Can you explain what the CIDNE Database is in general?

13 A. Every kind of action or any kind of report put on so that
14 specific database.

15 Q. How many -- I guess, well first of all, SIGACTS is that one
16 of the databases on CIDNE Database?

17 A. Yes, sir.

18 Q. How many other databases besides SIGACTS is in CIDNE?

19 A. I think there's -- I know there's five at least that's on
20 the server, but there's a lot.

21 Q. With regards to the CIDNE Database ----

22 MJ: I'm sorry, five what?

23 WIT: There's five different key areas that you can check from.

1 Questions continued by the civilian defense counsel [MR. COOMBS]:

2 Q. And with regards to those areas, so if you have SIGACTS as
3 one area, can you recall any other of the areas?

4 A. Yes. Yes, sir. There's IEDs, there's small arms fire,
5 there's kidnapping, arson, criminal activity.

6 Q. And each of those areas if you went to that database you
7 would find information in it I guess?

8 A. Yes, sir.

9 Q. And are we talking a little information or a lot of
10 information?

11 A. Every bit of information that they had on that event, sir.

12 Q. And what about the size of the database for the CIDNE
13 Database?

14 A. The report could be one sentence long or it could be 50 to
15 60 pages long.

16 Q. Are you familiar with the Center for Army's Lessons
17 Learned?

18 A. Yes, I am, sir.

19 Q. What is your, I guess, understanding of Center for Army's
20 Lessons Learned?

21 A. That's where people write information that they have
22 discovered or tactics or whatever to help other people understand
23 what we're fighting or to get better.

1 Q. Is the CIDNE Database something like that?

2 A. No, I don't think so, sir.

3 Q. And why not?

4 A. Well, the CIDNE Database is a historic record of everything
5 that we have reported, where the Center of Army Lessons Learned is
6 things that we've identified how to counteract them or to help us.

7 Q. So, correct me if I'm wrong, then the CIDNE Database would
8 be an historical account of what happened and the Center for Army's
9 Lessons Learned would be a lessons learned based upon what happened
10 and how we can change for the future?

11 A. Yes, sir.

12 Q. How does a SIGACTS, if you know, how does a SIGACTS get
13 into the CIDNE Database?

14 A. There's a couple of different ways it could get put into
15 there, but usually it's a report that's put in from the TOC and a
16 patrol they could have a patrol debrief or something and they could
17 be in place by a person that has administrative rights.

18 Q. And so let's go ahead and kind of describe this out. So if
19 I'm a unit and I'm going down a main supply route and I take in some
20 enemy contact and I call that in, can you, from that point, kind of
21 walk forward how -- what just happened to me and my unit on this main
22 supply route, might ultimately end up on the CIDNE Database?

1 A. Yes, sir. Every report that is established from that
2 incident will eventually make it onto CIDNE. They will go from that
3 initial report can be submitted through that TOC to that brigade, and
4 that brigade administrator will put that in the CIDNE Database,
5 eventually, and then as well as the patrol debriefs and any other
6 thing that follow that incident. The written up summary of what
7 happened will go, it will be reviewed, and then it will be placed in
8 a CIDNE so other people can look at it and learn what happened, sir.

9 Q. Does a SIGACTS go through a period of time where it's being
10 changed once it's been initially reported?

11 A. There is 2 weeks before they get put on there, at least 2
12 weeks before a CIDNE act is on there. Sometimes they can be altered
13 up to, you know, a couple of months.

14 Q. And when it's -- when a SIGACTS is finally put into the
15 CIDNE Database, is it automatically classified? Or do you know?

16 A. I don't know, sir.

17 Q. Do you know how a SIGACTS is or is not classified?

18 A. No, sir.

19 Q. From your standpoint, are you -- do you know if a SIGACTS
20 always classified as Secret or something else?

21 A. Out of the assumptions, I always assume that they are
22 Secret because it's on a Secret net, sir.

23 Q. Do you know if there's anything Top Secret within ----

1 A. No, sir.

2 Q. There's nothing Top Secret?

3 A. No, sir.

4 Q. Do you know if SIGACTS contain names of key sources that
5 are working with our government?

6 A. Not names, sir.

7 Q. And why not?

8 A. Because that is a little bit higher level of clearance,
9 sir.

10 Q. From your standpoint, do SIGACTS eventually become dated
11 more of a historical records?

12 A. Yes, sir.

13 Q. And when SIGACTS become dated, more of kind of a historical
14 record, are they still useful to you as an analyst?

15 A. Yes, sir.

16 Q. And how so?

17 A. If I see something that's trending a specific way, going
18 back to something I've identified in the past, I can refer back to
19 that and someone might be using that. Maybe a detainee was released
20 recently and he's back to what he was doing. So now I know what he
21 was going to do based on what he did in those historical findings,
22 sir.

1 Q. Now after the SIGACTS in this case were posted online in
2 open source, did you continue to use SIGACTS as intel analysts?

3 A. Yes, sir.

4 Q. And why?

5 A. Because they're just historic references, sir.

6 Q. Could you still use the SIGACTS that were now available
7 online? When I say online, open source unclassified to establish trends
8 in your work?

9 A. Yes, sir.

10 Q. Could you still use those same SIGACTS to make connections?

11 A. Yes, sir.

12 Q. Did it change how you used the SIGACTS once they were
13 released by WikiLeaks?

14 A. No, sir.

15 Q. And why not?

16 A. Because it's just historical information. They don't know
17 the processes and the things that we do to make that information into
18 our products. All they know is the same thing that we know, is what
19 happened.

20 Q. Do you know if the SIGACTS within the CIDNE Database stay
21 secret forever?

22 A. I don't know, sir.

1 Q. I want to ask you a few questions now about PFC Manning's
2 work performance as an analyst. Okay?

3 A. Yes, sir.

4 Q. Were you able to view his duty performance while he was
5 deployed?

6 A. Yes, sir.

7 Q. And how so?

8 A. While he was deployed I intermingled with him a few times
9 because as my job is to oversee and make sure that everybody was
10 doing the right stuff and make sure that the products were exactly
11 what our boss and our boss' boss would like.

12 Q. And based upon your ability to view his duty performance,
13 what was your assessment of his work performance?

14 A. He was good.

15 Q. And can you explain why you thought he was good?

16 A. He was our best analyst by far when it came to developing
17 products. Anything you would ask him. Most Soldiers you would have
18 is to spell it out exactly what they had to do. With Manning you
19 would just give him, "Hey, this is what I'm thinking." He would
20 bounce a couple of things off of you and come up with exactly what
21 you're looking for.

22 Q. And with regards to his work products, what he actually
23 gave you at the end, how did you assess those in quality?

1 A. The best, sir. That's why he was our go-to guy for that
2 stuff.

3 Q. Can you give an example just again in general unclassified
4 description what type of product you would actually hand to you?

5 A. I don't -- I don't know the line of classification of where
6 we would go, but it would be very detailed and everything that I'd
7 want.

8 Q. Did you ever hear anyone complain about PFC Manning not
9 being able to complete work on time?

10 A. One time, and that was the Showman event.

11 Q. Okay. So other than that, no problems with him completing
12 work?

13 A. No, sir.

14 Q. How was PFC Manning's productivity level compared to other
15 analysts during the deployment?

16 A. His was actually higher than everybody else's in the shop,
17 sir.

18 Q. Did you ever notice a drop in his productivity level in say
19 March or April of 2010?

20 A. No, sir.

21 Q. How would you describe PFC Manning's computer literacy?

22 A. It was very high.

23 Q. And why did you think that?

1 A. Well, our conversations with his background on computer
2 knowledge and then his demonstrations of utilizing the systems that
3 we had in place, sir.

4 Q. Would you say that PFC Manning was knowledgeable on the
5 systems that you had on the DCGS-A computer?

6 A. Yes, sir.

7 Q. And why do you believe that?

8 A. Because of the products that he came out with, sir.

9 Q. Did PFC Manning ever assist others with the programs that
10 are on their DCGS-A computers?

11 A. Yes, sir.

12 Q. Can you explain why you believe that?

13 A. Well, I mean Soldiers like Lorena, she would have
14 difficulties understanding how to make our density plots and PFC
15 Manning would show them, "Okay. All you had to was this, this, and
16 this," and they would be like, "Okay. Thank you." And they would go
17 back to doing what they do. He was just go-to guy for a lot of our
18 shops, sir.

19 Q. What was -- you said Lorena? Who is that?

20 A. Espina [Phonetic]. Specialist Espina [Phonetic].

21 Q. Okay. Now with regards to just experience level as an
22 analyst, was PFC Manning a very experienced analyst?

23 A. Not an experienced analyst, no, sir.

1 Q. And was he still at a stage, from your estimation, that he
2 had a lot to he learn as an analyst?

3 A. Yes, sir.

4 Q. How long does it take to become basically an expert
5 analyst?

6 A. It depends on the person and their personality, sir.

7 Q. In your experience from an analyst leaving the AIT training
8 to the point which they become an expert where would you say that
9 person is an expert analyst, about how long does it take to get to
10 that point, ----

11 A. It depends ----

12 Q. ---- In general?

13 A. It depends on the individual, sir, because some people
14 never reach that point where like -- they don't understand what
15 they're doing and some people they come straight out of AIT and
16 they're amazing. So, it's individual base, sir.

17 Q. And based upon your observation, you said that PFC Manning
18 still had a lot to learn. Where was he weak as an analyst?

19 A. In his assessment, sir.

20 Q. And can you explain why you thought that?

21 A. Sometimes our junior analysts jump to conclusions before
22 they actually vetted it through everything, every source. They would
23 use one or two sources and then jump to a conclusion, instead of

1 using all of the source and then bouncing it, you know, war gaming
2 with your partners and find out, okay, yeah we both agree or we
3 disagree and this is why. And that's his socializing, that's where
4 it failed him a little bit.

5 Q. Okay. Now, what programs would analysts use on their DCGS-
6 A computers to conduct their data mining?

7 A. We had mapping. We had CIDNE. We had HUMINT reports,
8 SIGINT reports.

9 Q. One of the programs on the DCGS-A computer -- did you have
10 mIRC Chat?

11 A. Yes, sir.

12 Q. And was mIRC Chat, from your understanding, part of the
13 baseline package for the DCGS-A computer or something that needed to
14 be added?

15 A. Yes, sir. When I was there they all had it. I don't know
16 if they were added -- you know, they were added in between the time
17 10th Mountain got there and I got there, but when I was there they
18 were all on.

19 Q. And when you were opening it -- well, first of all, did you
20 need mIRC Chat to do your job?

21 A. Yes, sir.

22 Q. And why so?

1 A. So you could contact other units, other companies, other
2 battalions and it was an immediate response to an analyst at that
3 other end.

4 Q. And you said that when you got you there you thought that
5 mIRC Chat was on everyone's computer. Let's just talk about your
6 computer. How was mIRC Chat on your computer?

7 A. It was a little pop up symbol on my computer. I just click
8 -- double click it and it opened up, sir.

9 Q. Was it on your desktop?

10 A. Yes, sir.

11 Q. Do you know what an executable file is?

12 A. Somewhat, sir.

13 Q. And what is your understanding of an executable file?

14 A. It's something that can function on its own, sir. It's a
15 program.

16 Q. Did the S-2 Section allow analysts to run executable files
17 as a shortcut from their desktop to their computer?

18 A. They are not allowed to put them on the DCGS-A, and nothing
19 was allowed to be downloaded onto the DCGS-A without permission from
20 Mr. Milliman or a DCGS-A operator. But we were allowed to put
21 shortcuts that go to our CDs or something or a quick reference or
22 something like that.

1 Q. All right. So, I want to make sure I understand you
2 correctly because we talked about this on several occasions ----

3 A. Yes, sir.

4 Q. ---- Correct?

5 A. Yes, sir.

6 Q. Do you recall telling me that analysts -- S-2 Section
7 analysts could run executable files from the desktop of their
8 computer as long as it was a shortcut?

9 A. The shortcuts they could, yes, sir.

10 Q. Okay. And when you say shortcut -- so if I have an
11 executable file put on it as a shortcut on my desktop of my DCGS-A
12 computer and what is that?

13 A. It's a quick link to it, sir. It's like a link. You click
14 on it and it goes straight to that file and opens it up.

15 Q. All right. Do you recall the S-2 Section saying that
16 analysts were ----

17 TC[MAJ FEIN]: Objection, Your Honor. Leading.

18 MJ: Sustained.

19 CDC[MR. COOMBS]: Okay, Your Honor, I -- can I complete the
20 question and then I don't believe it is?

21 MJ: Go ahead and complete the question and then I'll ----

22 CDC[MR. COOMBS]: Thank you.

23

1 **Questions continued by the civilian defense counsel [MR. COOMBS]:**

2 Q. Do you recall the S-2 section indicating that analysts were
3 allowed to run executable files from a CD on their DCGS-A computer?

4 MJ: All right. I'm going to - hold on just a minute.

5 Overruled. Go ahead.

6 TC[MAJ FEIN]: Objection, Your Honor. He's relying on hearsay.

7 MJ: Say it one more time.

8 CDC[MR. COOMBS]: Do you recall the S-2 Section allowing
9 analysts to run executable files from a CD on their DCGS-A computer?

10 MJ: And what is the Defense's response to the government's
11 hearsay objection?

12 CDC[MR. COOMBS]: In this instance, not offered for the truth,
13 it's relevant solely from the standpoint of what was put out for
14 analysts to understand. One of the charges in this case is the
15 government charging PFC Manning for using an executable file on his
16 computer. You know, in this instance its effect on the listener.

17 MJ: All right. I'll allow him to answer the question, "What if
18 any guidance was put out." Go ahead.

19 **Questions continued by the civilian defense counsel [MR. COOMBS]:**

20 A. As long as it was not downloaded to the actual DCGS-A, we
21 could use it, sir. If it was on a CD, yes, we could.

22 Q. And when were you informed that as long as it was on a CD
23 you could run an executable file?

1 A. When I was trying to download -- I was trying to download
2 a program onto it sometime in December and I had a conversation with
3 Mr. Milliman who said we couldn't download anything to the actual
4 DCGS-A, because it owned by somebody else. But we could keep it on a
5 CD. So if it was not download onto the DCGS-A, he didn't have a
6 problem with it.

7 Q. With regards to the use of executable files, did anyone in
8 the S-2 Section ever put out guidance that using an executable file
9 from a CD was against the authorized use -- or excuse me, the user
10 agreement?

11 A. No, sir.

12 Q. Did anyone in the S-2 Section put out guidance that putting
13 a shortcut for an executable file on the desktop of your DCGS-A
14 computer was against the user agreement?

15 A. No, sir.

16 Q. And you indicated you actually had put -- used an
17 executable file from a CD on your DCGS-A computer?

18 A. No, I tried to but you needed an administrative password.
19 That's why I went to Mr. Milliman to try to get that done.

20 Q. To put it on the computer?

21 A. Yes, sir.

22 Q. How about to run it from your CD?

23 A. I didn't have any problems with that, sir.

1 Q. And that was an executable file from your CD?

2 A. Yes, sir.

3 Q. With regards to the DCGS-A computers, were analysts allowed
4 to listen to music on their DCGS-A computers?

5 A. Yes, sir.

6 Q. And did you have music in the T-SCIF?

7 A. Yes, sir.

8 Q. And where did the music come from?

9 A. Some of it came from the T-drive. They had lot -- lots and
10 lots of music from there, and then some were from people's personal
11 CDs, sir.

12 Q. And with regards to the T-drive, how much information was
13 on the T-drive, if you know?

14 A. I don't know, sir.

15 Q. Did you ever look to see how much music was on the T-drive?

16 A. I know it was more than enough to overload your computer.
17 If you opened up and try to download even half of it your computer
18 would shut down. It would turn off immediately.

19 Q. Did anyone say that listening to music on your DCGS-A
20 computer was against the user agreement?

21 A. No, sir.

22 Q. Were analysts allowed to watch movies in the T-SCIF?

23 A. Yes, sir.

1 Q. Where did these movies come from?

2 A. From them, sir. Some of them came from the salesmen
3 outside and some of them came from the PX. Some of them were on the
4 actual T-drive as well.

5 Q. And these movies were allowed to be brought into the T-
6 SCIF?

7 A. Yes, sir.

8 Q. Did anyone in the S-2 Section say that bringing movies into
9 the T-SCIF was against the user agreement?

10 A. No, sir.

11 Q. With regards to the T-SCIF, where did you fall in the -- I
12 guess the hierarchy of responsibility in the T-SCIF?

13 A. In the T-SCIF I had no responsibility over the Soldiers,
14 just over the products.

15 Q. So can you give us an idea of the chain of command just in
16 the T-SCIF?

17 A. It was the Soldiers, their shift NCOIC or OIC, whichever it
18 was and then OIC, or the 2.

19 Q. And where did you -- just within the S-2 Section, I
20 understand you say you had no responsibility for Soldiers where did
21 you fall in seniority just in the S-2 Section?

22 A. I was overall in charge of all of the output from the
23 fusion cell.

1 Q. And when you say that, can you explain what you would be
2 responsible for?

3 A. All of the products went through me and it all went through
4 me -- it all went through me somehow. It either came back through me
5 or up through me. So if it was briefed to the commander or to the
6 two or anybody higher it would come to me for QA/QC.

7 Q. QA/QC is, Quality Assurance/Quality Control?

8 A. Yes, sir.

9 Q. With regards to the Soldiers, even though they wouldn't
10 working for you directly, as far as you having direct oversight of
11 them per se, everything they did went through you?

12 A. Yes, sir.

13 Q. And from your standpoint as a -- I guess as the Fusion OIC,
14 would that be your position?

15 A. Yes, sir.

16 Q. Did you see anything in the T-SCIF when Soldiers used
17 games, music, or -- excuse me, music or movies, or executable files
18 that was against the user agreement, from your perspective?

19 A. I didn't. No, sir.

20 Q. Let me ask you a couple of questions about terms used by
21 analysts in their work product, okay?

22 A. Yes, sir.

23 Q. Can you tell me what an intelligence gap is?

1 A. It's information that we don't have, that we do not have at
2 that time.

3 Q. And when would you call -- if you don't have it, that's
4 something you don't know or just something you're unsure of?

5 A. It's something that we might have an idea about, but we
6 don't have -- we don't know for sure what it is, so ----

7 Q. And when would you use the term, intelligence gap in a work
8 product?

9 A. If you didn't have the answer for who, what, when, why or
10 one of the five Ws or something, sir.

11 Q. If you had actual knowledge of a particular fact, would you
12 call that fact an intelligence gap?

13 A. If we had the knowledge of it, no it would not be an
14 intelligence gap.

15 CDC[MR. COOMBS]: Thank you, Chief.

16 WIT: Sir.

17 MJ: Cross examination?

18 TC[MAJ FEIN]: May we have a moment, Your Honor?

19 MJ: Yes.

20 **[There was a pause while the trial counsel conferred at the counsel**
21 **table.]**

22

23

CROSS-EXAMINATION

Questions by the trial counsel [MAJ FEIN]:

Q. Chief, first I'd like you to start off testifying about restrictions or lack of restrictions on SIPRNET. First off, a person in order to access SIPRNET, you had to have a security clearance, correct?

A. Yes, sir.

Q. And information is presumed to be Secret that's on SIPRNET?

A. Yes, sir.

Q. That includes the databases on SIPRNET?

A. Yes, sir.

Q. That includes the websites on SIPRNET?

A. Yes, sir.

Q. And everyone who worked on the T-SCIF in that S-2 Section had Top Secret SCI clearance?

A. Yes, sir.

Q. That included PFC Manning?

A. Yes, sir.

Q. And everyone who worked on SIPRNET at the brigade had a Secret clearance?

A. At least, sir.

Q. And when information from SIPRNET was burned onto CDs, how was -- how were those CDs required to be treated?

1 A. All CDs were handled as Secret.

2 Q. Okay. Were they all labeled? You testified earlier they
3 weren't always, always labeled?

4 A. Not always labeled, sir.

5 Q. But they were still treated as Secret.

6 A. Yes, sir.

7 Q. When information was burned for Iraqis to share, that was a
8 mission of the S-2 shop?

9 A. Yes, sir.

10 Q. The mission was to share U.S. classified information with
11 the Iraqis?

12 A. It was -- well, there's different levels of Secret, sir;
13 but there's releasable to, and if those were releasable to Iraqis
14 then we would use that, sir.

15 Q. Okay. And who makes that determination?

16 A. Either the user that puts it in or the classification
17 identifiers, sir.

18 Q. Sure, but so the person who is burning it onto a CD and
19 ultimately sharing with the Iraqis, is that a foreign disclosure
20 officer?

21 A. Yes, sir.

22 Q. Okay. And are those specific trained individuals?

23 A. Yes, sir.

1 Q. Who are the foreign disclosure officers in the brigade S-2
2 shop?

3 A. Lieutenant Fields and myself were foreign disclosure
4 officers.

5 Q. Okay. And it was your responsibility to review information
6 before it went to the Iraqis?

7 A. Yes, sir.

8 Q. And then what other information -- classified information
9 burned from SIPRNET was allowed out of the SCIF?

10 A. If we needed to go to any other FOB or any other location
11 that was required to pass that information to them, that's when it
12 was left outside.

13 Q. Does that include the Soldiers CHU?

14 A. Yes, sir.

15 Q. They're individual CHU they could take classified
16 information on a CD to their individual CHUs?

17 A. I don't think that was practice, but I don't see how that
18 would have been stopped.

19 Q. Okay. I'll get to that in a moment whether it could be
20 stopped or not?

21 A. Right.

1 Q. Was anyone in your office that you knew about authorized to
2 burn classification information from the SIPRNET onto a CD and take
3 it to their CHU?

4 A. The OIC and NCOIC were allowed to, sir.

5 Q. Okay. And what the purpose of that?

6 A. Because they have SIPR connections in their CHU.

7 Q. Okay. So they actually had a work place in their CHU that
8 had Secret connections?

9 A. Yes, sir.

10 Q. Did others have?

11 A. No, sir.

12 Q. Others in the brigade have that?

13 A. Yes, sir.

14 Q. Like who?

15 A. OICs, usually the OICs that had - like I think the S-6 as
16 well, I think he - him, the battalion commander ----

17 Q. The brigade commander?

18 A. ---- the brigade commander.

19 Q. Did you have that in your CHU?

20 A. No, sir.

21 Q. Did you have classified information in your CHU?

22 A. No, sir.

1 Q. Okay. Did a junior enlisted have classified information in
2 their CHU?

3 A. No, sir.

4 Q. And was anyone who burned a CD from SIPRNET with classified
5 information on it they were allowed to take it to their CHU and put
6 it on to the Internet for the whole world to see, were they?

7 A. No, sir.

8 Q. Okay. Was there a rule written down in any SOP or was that
9 briefed during any meeting at the SCIF?

10 A. As far as intelligence being put on to an unclassified
11 system? That is -- we learned that in AIT and get briefed that every
12 time we go to a duty station, sir.

13 Q. Okay. Is that something that was commonly known within the
14 brigade S-2 SCIF?

15 A. It was commonly known throughout the whole intelligence
16 community, sir.

17 Q. Why do you focus on the intelligence community versus even
18 the whole Army?

19 A. Well, if they had a clearance then they understand that,
20 sir.

21 Q. And everybody in the intelligence community has a
22 clearance?

23 A. Yes, sir.

1 Q. Everyone in the intelligence community, especially 2-10
2 Mountain at that time when you deployed with PFC Manning their job
3 was to handle classified information all the time, correct?

4 A. Correct, sir.

5 Q. Okay. So let's go to these restrictions on SIPRNET. Were
6 the restrictions on SIPRNET?

7 A. No, sir.

8 Q. But you had to have the ability to be on SIPRNET?

9 A. Yes, sir.

10 Q. So you had to have a clearance?

11 A. Definitely.

12 Q. Would you consider a clearance a restriction?

13 A. Well, everybody had a clearance, sir.

14 Q. On SIPRNET?

15 A. Everybody in our shop had a -- like you identified, had Top
16 Secret ----

17 Q. So when you testified earlier no restriction on SIPRNET,
18 you meant for individuals in your shop, what they did on SIPRNET?

19 A. Yes, sir.

20 Q. Okay. But could anyone off the street do anything thing
21 want to do SIPRNET?

22 A. No, sir.

23 Q. Why?

1 A. Because they didn't have the clearance -- the access.

2 Q. Okay. Now, let's talk about SIPRNET itself. You mentioned

3 a bunch of different databases. Without your repeating them all, if

4 you could -- you would agree that if you could get to the information

5 on SIPRNET, with a clearance, then you could access that information?

6 A. Yes, sir.

7 Q. And you had the DCGS-A system as the system provided to you

8 as an intelligence analyst by the Army to do that?

9 A. Yes, sir.

10 Q. You had programs on the DCGS-A computer to help you do

11 that?

12 A. Yes, sir.

13 Q. You had the SIPRNET Internet to allow you to -- help you do

14 that?

15 A. Yes, sir.

16 Q. You had Intelink to help you do that?

17 A. Yes, sir.

18 Q. You had Intelpedia to do that?

19 A. Yes.

20 Q. And if it was on Intelpedia and you could access it and you

21 could use it?

22 A. Yes, sir.

1 Q. And the mission of the 2-10 Mountain downrange was to focus
2 on your brigade's AO which is the Southeast area of Baghdad, correct?
3 A. Yes, sir.
4 Q. Okay. And so Intelpedia on SIPRNET contained classified
5 information?
6 A. Yes, sir.
7 Q. And that classified information required individuals to
8 have clearances?
9 A. Yes, sir.
10 Q. Sign a nondisclosure agreement?
11 A. Yes, sir.
12 Q. Have background investigations?
13 A. Yes, sir.
14 Q. To the best of your memory, no Soldier in your S-2 shop,
15 although as you mentioned you were not technically in charge of any
16 of them, but to the best of your memory no one was authorized to use
17 classified information for personal use?
18 A. Yes, sir.
19 Q. Now, let's talk about DCGS-A. DCGS-A was the computer
20 system you were provided, correct?
21 A. Yes, sir.
22 Q. What was the first system when you joined the Army that you
23 used as a junior enlisted analyst?

1 A. The ASAS, sir.

2 Q. The ASAS was that the predecessor to the DCGS?

3 A. Yes, sir.

4 Q. Okay. Did that run on a classified network?

5 A. Yes, sir.

6 Q. And DCGS-A, when did DCGS-A, to the best of your memory

7 replace ASAS?

8 A. Late '90s.

9 Q. Okay. How -- in your own words for the Court, how do you

10 describe DCGS-A, the system?

11 A. This is a consolidated -- it's a computer with everything

12 on it that we need as analysts.

13 Q. So everything you need as an analyst?

14 A. Yes, sir.

15 Q. What are some the programs that the Army and you use as an

16 analyst? What are their names?

17 A. The ones that we've identified, sir. There's mapping.

18 There's different maps that they change throughout the years ----

19 Q. So in Iraq when you were 2-10, when PFC Manning was there,

20 what were the ones that you remember then?

21 A. I mean, I know there was CIDNE. I know there was Intelink.

22 There was Intelpedia, and I don't remember the map -- the mapping and

23 ----

1 Q. Was there a ArcGIS type of program?
2 A. ArcGIS? Yes.
3 Q. Was there a Query Tree?
4 A. Yes, sir.
5 Q. What's Query Tree?
6 A. Query Tree is what we would type in a search for anything.
7 If we could use part of the name, some of the name with different
8 symbols or variations of things to find out information on that
9 specific item ----
10 Q. And, I'm sorry, please, go the ahead.
11 A. ---- On that specific item or person, sir.
12 Q. Okay. And when someone who had to have a Secret clearance
13 used the Query Tree it queried different databases that were on
14 SIPRNET, correct?
15 A. You had to have a Secret clearance, yes.
16 Q. And when you typed in Query Tree there was a program that
17 allowed you to search databases for the information you're looking
18 for?
19 A. Yes, sir.
20 Q. Because you said it searched everything? Correct?
21 A. Yes, sir.
22 Q. And by everything you mean almost every database you can
23 think of as an intel analyst?

1 A. Yes, sir.

2 Q. But on the SIPRNET, the Secret system, JWICS, the higher
3 level?

4 A. Yes, sir.

5 Q. What about the mapping programs? Was a Google maps?

6 A. There was ----

7 Q. Or Google Earth, excuse me.

8 A. There was Google Earth. Yes, sir.

9 Q. Okay. And how was Google Earth used?

10 A. We didn't -- we only used Google Earth when we wanted the
11 defined pictures cause they had a better satellite image than the
12 military one that we used.

13 Q. Okay. And Google Earth was on SIPRNET, correct?

14 A. Yes, sir.

15 Q. And the information provided -- put on Google Earth was
16 from classified information?

17 A. Yes, sir.

18 Q. You mentioned CIDNE a few times. Just to clarify a few
19 points -- well first before that, about PFC Manning's computer
20 literacy you testified just now about. You said that he was good at
21 until -- your words were, "Utilizing the tools he had on the
22 computers?"

23 A. Yes, sir.

1 Q. Are those tools you're talking about right now?
2 A. Yes, sir.
3 Q. Okay. Do you know what Wget is?
4 A. No, sir.
5 Q. You don't know what Wget is?
6 A. That don't sound familiar ----
7 Q. So you don't know if he was good or bad at using Wget?
8 A. No, sir.
9 Q. Was Wget, to the best of your memory, one of those DCGS
10 tools the Army provided for you to do intel on?
11 A. I don't know what Wget is, sir.
12 Q. But he was good with the tools that the Army gave?
13 A. Yes, sir.
14 Q. Query Tree, ArcGIS, Google Maps?
15 A. Yes, sir.
16 Q. CIDNE?
17 A. Yes, sir.
18 Q. But you testified he was as a junior analyst he was weak in
19 his ability to assess?
20 A. Yes, sir.
21 Q. How did you assess whether he was good at utilizing the
22 tools if he was weak in his assessments?

1 A. Cause being an analyst is a two-part job. You come up with
2 products and you can always paint a picture of what's actually
3 happening. And then you have the second part of being an analyst is
4 taking that information and then making some deductive reasoning or
5 some assessments on what you think is actually going to happen or how
6 you think that's going to affect the enemy or the friendly.

7 Q. So then would it be accurate to say you have to understand
8 what you're looking at and you have to understand how to apply what
9 you're looking at?

10 A. Yes, sir.

11 Q. Okay. Was he good at step one of what he was looking at?

12 A. Yes. Without a doubt, sir.

13 Q. And how do you rate him? Let's say use a rating scale of 1
14 to 10, 1 -- 10 being the world's best analyst which I'm sure you are
15 a 10 and then 1 being fresh -- not through AIT. How would you rate
16 PFC Manning in how to use the information?

17 A. How to use the information he was ----

18 Q. How to analyze it?

19 A. He's maybe a 5, sir.

20 Q. How do you rate him on that 1 to 10 scale of what the
21 information is because he could respond to everything you asked him
22 to do and he pulls the data.

23 A. A 10, sir.

1 Q. Is that what you mean when you talk about data mining?

2 A. Yes, sir.

3 Q. And that's -- and that data mining, what tools did use to

4 data mine for you?

5 A. Query Tree was the most common, sir.

6 Q. What about CIDNE?

7 A. CIDNE was utilized as well.

8 Q. And CIDNE was used, was SIGACTS used?

9 A. Yes, sir.

10 Q. And he pulls SIGACTS?

11 A. Yes, sir.

12 Q. Okay. Could you explain more for the Court what you mean

13 by the term density plot? What's a density plot?

14 A. Yes, sir. That's what I was talking about with the colors

15 or the intensity of the attack and it fades out to a lighter color

16 with the less attacks that are in that location it would go lighter

17 and lighter ----

18 Q. Okay.

19 A. ---- So it's hot spots basically, sir.

20 Q. And I should have asked a more specific qu -- what

21 information does an analyst or did PFC Manning use to make that

22 density plot?

1 A. All those programs, sir. We used use them to identify,
2 whether it be a small arms attack or IED attack or an ambush or even
3 kidnapping, anything like that that he'd use that information in
4 CIDNE he'd use it from any of the databases, sir.

5 Q. And you use density plots in your line of work?

6 A. Yes, sir.

7 Q. And density plots showed what happened in the past?

8 A. Yes, sir.

9 Q. So you use that historic information you're talking about?

10 A. Yes, sir.

11 Q. And it's that historic information that was used -- that
12 PFC Manning was very good at from density plots came from CIDNE is
13 one of the sources?

14 A. One of the sources. Yes, sir.

15 Q. And you had mentioned IED information?

16 A. Yes, sir.

17 Q. You would agree that CIDNE had key leader engagements
18 annotated in there?

19 A. It had not specifics of the engagement, but it did have
20 generalized engagements. Yes, sir.

21 Q. It had you mentioned IEDs, the TTPs that we follow in
22 reacted to IED.

23 A. Yes, sir.

1 Q. The TTPs we follow in finding IEDs?

2 A. It didn't explain how we found them, sir. It would explain
3 what happened in that event.

4 Q. Whether it ground penetrating radar worked or did not work?

5 A. No, sir.

6 Q. It wouldn't explain that?

7 A. No, sir.

8 Q. Not to the best of your memory?

9 A. I know it didn't explain that.

10 Q. Okay. Probably not from the SIGACT you read?

11 A. Yes, sir.

12 Q. I assume you also have not read every single SIGACTS in
13 CIDNE?

14 A. Yes, sir.

15 Q. How many times have you deployed?

16 A. Five times.

17 Q. Five times. In what theaters?

18 A. In Afghan -- or Afghanistan and Iraq, sir.

19 Q. How many times in each?

20 A. One in Afghanistan and four in Iraq.

21 Q. How many times with 2-10 Mountain?

22 A. Twice -- three times with the 10th Mountain and twice with
23 SOCCENT.

1 Q. Thank you. You would agree that CIDNE has MEDEVAC reports
2 in it?

3 A. Yes, sir.

4 Q. How we MEDEVAC? DUSTWUN, how we find our kidnapped
5 Soldiers?

6 A. It didn't tell how to, it just tells the results of it,
7 sir.

8 Q. So what we did once someone was kidnapped?

9 A. No. It was the actual event. There's no report on what we
10 did or how we reacted to it. It's a report of just facts on what
11 happened during that event.

12 Q. What happened on the ground then?

13 A. Yes, sir.

14 Q. And those types of reports you relied on PFC Manning to
15 understand what was in them to pull the information you needed?

16 A. Yes, sir.

17 Q. And he was good at that?

18 A. Yes, sir.

19 Q. He was a 10 at that?

20 A. Yes, sir.

21 Q. Would you have gone to him if you didn't understand what
22 was in the CIDNE Database?

1 A. I would still utilize him, but not as much as he was
2 utilized, sir.

3 Q. He understood -- you had confidence that he understood
4 exactly that type of information that was there?

5 A. Yes, sir.

6 Q. Earlier you testified about mIRC Chat. mIRC Chat was there
7 when you showed up?

8 A. Yes, sir.

9 Q. What unit did you RIP out with?

10 A. It was the 82nd.

11 Q. 3rd Brigade, 82nd Airborne?

12 A. Yes, sir.

13 Q. When you RIPd out there as a part of normal procedures, you
14 fell down on what their all-source tech computer?

15 A. Yes, sir.

16 Q. And then that all source -- you did a left seat, right seat
17 with that all source tech?

18 A. No, I didn't, sir.

19 Q. You didn't -- you didn't get that opportunity?

20 A. No, sir. I showed up a month later.

21 Q. Okay. And when you showed up a month later mIRC was on
22 that computer?

23 A. Yes, sir.

1 Q. Earlier you testified about the use of open source
2 intelligence. How did 2-10 Mountain use OSINT in your daily
3 operations?

4 A. If we wanted to look for other information, if we're trying
5 to confirm something happened or add to our packet because we made
6 target decks and different things like that, so we could get any kind
7 of intelligence that we could get, whether it would be from CNN or
8 from Intelpedia, we get it.

9 Q. And the SIGACTS you're testifying about that came from
10 CIDNE?

11 A. Yes, sir.

12 Q. And CIDNE was on SIPRNET?

13 A. Yes, sir.

14 Q. And most SIGACTS were classified Secret?

15 A. Yes, sir.

16 Q. What is the classification of open source information?
17 Typically?

18 A. Unclassified.

19 Q. Unclassified?

20 A. Yes, sir.

21 Q. Can it be classified if there's analysis with it?

1 A. If there is analysis put on it, then it would be removed
2 from unclassified. Because that's usually what makes a SIGACTS
3 classified is when it has an assessment or analysis onto it ----

4 Q. Okay.

5 A. ---- then it moves to the Secret.

6 Q. Okay. And I guess I should even been more specific --
7 thank you for that, but for open-source information, it's
8 unclassified unless it has analysis with it?

9 A. It can have analysis just as long as it's not done by an
10 intelligence professional.

11 Q. Okay. Because then why?

12 A. Because we have that training to make -- and the
13 information to make a more educated analytic view.

14 Q. And it was at the training you think that PFC Manning did
15 or did not have?

16 A. Yes, we have that, all of us.

17 Q. Did he have that or not?

18 A. Yes, sir.

19 TC[MAJ FEIN]: One moment, please, Your Honor.

20 MJ: Okay.

21 **[There was a pause while the trial counsel conferred at the counsel**
22 **table.]**

23

1 Questions continued by the trial counsel [MAJ FEIN]:

2 Q. Also earlier when Mr. Coombs asked you questions I think
3 there was some confusion with executable versus something on your
4 desktop. If you had a shortcut on your desktop do you believe that
5 to be an executable?

6 A. No, sir.

7 Q. Okay. What do you believe it does?

8 A. That brings you to where that executable file is, sir.

9 Q. Okay. So it's a -- it's just a link to put you to where
10 the other file is?

11 A. Yes, sir.

12 Q. And you -- to the best of your memory, you were not
13 authorized put any executable files onto your actual DCGS machine?

14 A. That's correct, sir.

15 Q. You remember though you testified that you were told by Mr.
16 Milliman, apparently, that you could have executables on a CD?

17 A. Yes, sir.

18 Q. And then you can run the CD?

19 A. We could run the CD. Yes, sir.

20 Q. So long as you didn't have to be an administrator?

21 A. Yes, sir.

22 Q. And then as long as it allowed you, because you weren't an
23 administrator, you could run it on the CD?

1 A. Yes, sir.

2 Q. But you could not put it onto your desktop ----

3 A. Yes.

4 Q. ---- the file itself?

5 A. Right.

6 Q. And prior to your preparation for this testimony, had you

7 ever heard of the term executable file?

8 A. No, sir.

9 Q. So what is it that you remember Mr. Milliman telling you

10 about a CD?

11 A. That we were not allowed to put any kind of programs or

12 anything without going through him. Everything that had to be

13 downloaded onto the computer had to go through him because he was

14 overall responsible for those systems.

15 Q. So whatever this is on this CD you went to him?

16 A. Yes, sir.

17 Q. And after you went to him he said just run it on the CD,

18 you're fine?

19 A. If we had any intentions of putting it onto the desktop we

20 had to go to him. If it was run off the CD we didn't ever have to go

21 to him.

22 Q. And you sought that clarification and he gave that?

23 A. Yes, sir.

1 Q. So you don't recall today whether that thing on the CD was
2 a self-executable or just a program, because you don't know the
3 difference between the two?

4 A. No, I do not.

5 TC[MAJ FEIN]: Okay. No further questions, Your Honor.

6 MJ: Redirect?

7 CDC[MR. COOMBS]: Yes, Your Honor.

8 **REDIRECT EXAMINATION**

9 **Questions by the civilian defense counsel [MR. COOMBS]:**

10 Q. All right. Chief, I just want to clear up that last point
11 then to make sure. So do you recall me sending an e-mail to you to
12 seek clarification on this point of how you could use a executable
13 file on either on a CD or as a shortcut on the desktop of your
14 computer?

15 A. Yes, sir.

16 Q. And with regards to -- I only want to ask you from what you
17 were told and from your perspective. Okay? Is that all right?

18 A. Yes, sir.

19 Q. You had earlier said that you ran something from a CD and
20 you didn't need to the seek guidance or permission for that because
21 that was permitted. Do you recall saying that?

22 A. Yes, sir.

23 Q. What did you run from a CD?

1 A. Well, there's different things that we had to click on. I
2 know I ran -- maybe that was a movie player or something like that.
3 I know I ran a movie player from that as well, a VLC.
4 Q. All right. So it was -- a movie player was a program that
5 you didn't have on your DCGS-A computer but you did have it as a
6 program on a CD and you could run it from a CD?
7 A. Yes, sir.
8 Q. On the DCGS-A computer?
9 A. Yes, sir.
10 Q. And presumably I guess if you were doing a movie player you
11 had something on your DCGS-A computer that you wanted to use that
12 movie player to play?
13 A. Right.
14 Q. Did anyone say that was against the users -- user agreement
15 to do that?
16 A. No, sir.
17 Q. Now, when you have a shortcut on the desktop of your
18 computer that links you to a CD. So if you click a shortcut and it
19 runs whatever you have on the CD, was that permitted?
20 A. Yes, sir.
21 Q. Did you have to go to Mr. Milliman or anyone else to get
22 permission to do that?
23 A. No, sir.

1 Q. When you say permitted like do you recall that was put out
2 by the S-2 Section or how was that permitted?

3 A. When I -- when we seek clarification for what we could put
4 onto the computers, that's the guidance. They told us as long as you
5 don't download it onto the actual computer, you can use it.

6 Q. All right. So tell me if this was permitted. If I had say
7 Wget or say I had some executable program on a CD and I plugged it in
8 -- put it in ----

9 TC[MAJ FEIN]: Your Honor, objection.

10 MJ: Yes.

11 TC[MAJ FEIN]: The witness has already said he doesn't
12 understand the difference between an executable and an installable
13 file or program. There's not sufficient basis here to even continue
14 with this line of questioning.

15 CDC[MR. COOMBS]: I don't believe that's what the witness
16 said, Your Honor. I believe the witness said prior to maybe this
17 court- martial wasn't as familiar with the term -- wasn't familiar
18 with the term executable file, but he knew what an executable was. I
19 actually asked him that during my direct.

20 MJ: What is an executable file?

21 WIT: Something that could be run by itself, ma'am.

22 MJ: What's the other program you used?

1 TC[MAJ FEIN]: Well, it's the foundation between something that
2 could be run on its own versus a program that would be installed and
3 the difference between the two.

4 MJ: Let me just start -- what is your understanding about what
5 kind of a program could be used in a computer with a CD and shortcut
6 added to the desktop? What, if any, restrictions on what's on that
7 CD are there?

8 WIT: I was under the impression that there was no restrictions
9 on the actual CD.

10 MJ: It doesn't matter what kind of a program it is, anything
11 goes?

12 WIT: Yes, ma'am.

13 MJ: Overruled. Go ahead.

14 **Questions continued by the civilian defense counsel [MR. COOMBS]:**

15 Q. So if I had a different program on a CD and I placed a
16 shortcut for that program on my desktop to run it and I double click
17 and it ran, from your perspective was that against the user agreement
18 from your understanding?

19 A. No, sir.

20 Q. And you had talked about on cross the various programs that
21 were available to you from the DCGS-A computer, and when I asked you
22 what program you used on the CD you said it was a version of the
23 media player. Is that right?

1 A. Yes, sir.

2 Q. So how did you get that version of the media player that
3 wasn't available on the DCGS-A computer? Where did you go get that
4 version on the CD?

5 A. It was a CD that was given to me, sir.

6 Q. Do you know where that came from?

7 A. I do not remember.

8 Q. If a Soldier downloaded something from NIPRNET and burned
9 it onto a CD, any sort of program, and then put that into their DCGS-
10 A computer to run from the CD was that from your understanding
11 against the user agreement?

12 A. You're allowed to do that, but you're not allowed to do it
13 the other way around.

14 Q. And the other way around, when you say actually putting it
15 on the computer -- and I want to make sure there's no confusion
16 there. When you're putting it on the computer, the program, is that
17 something that you needed to have administrative rights to do?

18 A. If you were going to do download it onto the computer you
19 need administrative rights.

20 Q. And so -- and you can said this is beyond your computer
21 knowledge, but if you didn't have admin rights to the DCGS-A
22 computer, could you do that?

23 A. I know I couldn't do it.

1 Q. Even if you wanted to like if you said, "Look, I'm going to
2 add this program to my DCGS-A computer," you didn't have admin
3 rights, from your understanding you couldn't do it?

4 A. Right.

5 Q. Even if you wanted to?

6 A. Yes, sir.

7 Q. That might be an example of why that was not permitted?

8 A. Yes, sir.

9 CDC[MR. COOMBS]: Thank you.

10 WIT: Yes, sir.

11 MJ: Government, any last ----

12 TC[MAJ FEIN]: May I have a moment, Your Honor?

13 MJ: Yes.

14 [There was a pause while the trial counsel conferred at the counsel
15 table.]

16 TC[MAJ FEIN]: No further questions, Your Honor.

17 MJ: All right. Chief, I have a couple of them. Just to make
18 sure that understood your testimony.

19 **EXAMINATION BY THE COURT-MARTIAL**

20 **Questions by the military judge:**

21 Q. You wanted to have a media viewer from a CD and you put
22 that into your computer.

23 A. Yes, ma'am.

1 Q. And you put a shortcut on the desktop to use that?

2 A. No. I would just go straight to the CD, ma'am. I have a
3 shortcut to the CD player.

4 Q. You had a shortcut to the CD player?

5 A. Yes, ma'am.

6 Q. Then why did you go to Mr. Milliman at all about using that
7 CD?

8 A. If the CD got scratched or you lost it or something, you
9 didn't have access to that computer or to that program no more. So I
10 wanted to put stuff on my computer. Anything I wanted to put on it
11 that was not already on a DCGS I had to go through Mr. Milliman.

12 Q. So this media viewer, did you actually run it from the CD
13 or did Mr. Milliman put it on your computer?

14 A. I ran it from a CD for a little while until Mr. Milliman
15 said it was okay to put it on and he eventually put it on for me.

16 Q. I thought I heard you testify earlier that you had tried
17 to use it from the CD and you needed administrative rights?

18 A. Yes. That's -- I initially tried to put on it myself.

19 Q. On the computer?

20 A. Yes, ma'am.

21 Q. If you weren't supposed to add things to the computer then
22 why did you do that?

1 A. Because we -- I did not know at that time that the DCGS was
2 not our property and that's why we're not allowed to put those that
3 on the DCGS because they were not our, 2-10, property. I assumed
4 they were ours from home, which they were not.

5 Q. Were there any restrictions that you're aware of with
6 respect to putting a program on a CD that actually accesses the
7 classified information on the SIPR?

8 A. No, ma'am.

9 MJ: Any follow-up based on that?

10 TC[MAJ FEIN]: No, Your Honor.

11 CDC[MR. COOMBS]: No, ma'am.

12 MJ: Temporary or permanently excused.

13 CDC[MR. COOMBS]: Permanent, Your Honor -- actually temporary.

14 I apologize.

15 **[The witness was temporarily excused, duly warned, and withdrew from**
16 **the courtroom.]**

17 MJ: Is now a good time to take lunch or do you want to go for
18 another witness?

19 CDC[MR. COOMBS]: Lunch break, Your Honor.

20 MJ: How long would you like?

21 CDC[MR. COOMBS]: If we could have an hour and 15 minutes?

22 MJ: All right. Any objection?

23 TC[MAJ FEIN]: No, ma'am.

1 MJ: All right. Court is in recess then till 1345 or 1:45.
2 [The court-martial was recessed at 1233, 8 July 2013.]
3 [The court-martial was called to order at 1400, 8 July 2013.]
4 MJ: Please be seated. Court is called to order. Major Fein,
5 please account for the parties.
6 TC[MAJ FEIN]: Your Honor, all parties when the court last
7 recessed are again present with the exception of Captain Overgaard is
8 absent and Captain Whyte is present.
9 MJ: All right. Thank you. Is there anything we need to
10 address before we continue?
11 TC:[MAJ FEIN]: No, ma'am.
12 CDC[MR. COOMBS]: No, ma'am.
13 MJ: All right. Defense?
14 CDC[MR. COOMBS]: Yes, Your Honor. The defense calls Sergeant
15 David Sadtler to the stand.
16 **SERGEANT DAVID SADTLER, U.S. Army, was called as a witness for the**
17 **defense, was sworn, and testified as follows:**
18 **DIRECT EXAMINATION**
19 **Questions by the trial counsel [MAJ FEIN]:**
20 Q. For the record, you're Sergeant David Sadtler of the 709th
21 Battalion, 66th Brigade?
22 A. Yes, sir.
23 TC[MAJ FEIN]: Thank you.

1 **Questions by the civilian defense counsel [MR. COOMBS]:**

2 Q. Sergeant Sadtler, were you deployed to Iraq in the
3 2009/2010, timeframe?

4 A. Yes, sir.

5 Q. What unit were you deployed with?

6 A. 10th Mountain, 2nd Brigade, Special Troops Battalion.

7 Q. Do you know PFC Manning?

8 A. Yes, sir.

9 Q. And how do you know him?

10 A. He was -- he was in the brigade element. I was in the
11 battalion element of the MI Section.

12 Q. How often did you have interaction with PFC Manning?

13 A. During work functions and shift change.

14 Q. And during those time periods, during any of the work
15 functions or shift changes, did you ever have conversations with PFC
16 Manning?

17 A. On a few occasions, yes, sir.

18 Q. I want to ask you a few questions about PFC Manning's
19 knowledge on certain software packages for the DCGS-A computer.
20 Okay?

21 A. Roger, sir.

1 Q. With regards to your interaction with him, did you come to
2 know whether or not he had any knowledge with regards to software
3 packages?

4 A. Yes, sir.

5 Q. And how did you come into that knowledge?

6 A. He was one of the -- what I would call the better analysts
7 in the Section.

8 Q. And why do you say that?

9 A He focused his knowledge onto learning a software and he
10 really -- he honed his abilities in knowing the software and knowing
11 the job.

12 Q. And what type of software was he knowledgeable on?

13 A. ArcGIS and I'm not sure which other, which other software
14 he was using. But ArcGIS was a large part of our job.

15 Q. What did you use in general, what did you use ArcGIS for?

16 A. We used ArcGIS to plot events onto a map and that would be
17 exported to either Google Earth or put into a PowerPoint.

18 Q. Did PFC Manning ever help you with any of the software?

19 A. He had helped someone else in the Section while I was there
20 so I learned a little bit as he was showing us how to accomplish the
21 task.

22 Q. And do you recall what software package he was helping the
23 other person on?

1 A. That was ArcGIS, sir.

2 Q. During your conversations with PFC Manning, did you ever
3 have a conversation about setting up a hash table software?

4 A. He had brought me to the side to have what seemed to be a
5 private conversation and he fielded the idea to me that he wanted to
6 generate hash tables on a computer and market that in some fashion.

7 Q. What are hash tables?

8 A. Hash tables are mathematical calculations of passwords that
9 are supposed to be in a one-way fashion so that you can't reverse
10 that sequence into the original password, thereby securing that
11 password from release.

12 Q. And the idea that PFC Manning was talking to you about --
13 from what you heard, did you believe that was a marketable idea?

14 A. It had already been accomplished in the open-source world.
15 Or it was generally already known to exist. So for reimplementing
16 it, it did make sense to me.

17 Q. Now, from your position, what job did you have when you
18 were deployed?

19 A. I was a member of the team in the TOC and we monitored
20 events at the other battalion levels. So if there was a IED or a
21 convoy, we would make sure that that convey was looked after by
22 assets.

23 Q. Do you have computer knowledge yourself?

1 A. Yes, sir.

2 Q. And what, can you explain to the Court, kind of the level
3 of your computer knowledge?

4 A. I spent my teenage years reading and studying on computer
5 related technology. I was in the computer club in high school just
6 a hobbyist.

7 Q. Do you know how to program?

8 A. I did know basic programming a few years ago but I haven't
9 done anything recently so I'm no longer considering myself a
10 programmer.

11 Q. All right. With regards to, I guess, other than marketing
12 this kind of hash table software, was there any other conversation on
13 what PFC Manning was planning to use the program for, if anything?

14 A. No, sir.

15 Q. Based upon your interaction with PFC Manning, would you
16 describe him as somebody who was knowledgeable on worldly events?

17 A. Yes, sir.

18 Q. Why would you say that?

19 A. He had told me that he was up to date on worldly events and
20 that the staff in the brigade would come to him if they needed to
21 know information about what was going on in the world.

22 Q. Do you know whether or not he read open-source information?

1 A. Yes, sir. I believe that's what he was trying to express
2 to me.

3 Q. Do you recall an incident where PFC Manning brought to you
4 a concern regarding Iraqis being arrested by the Iraqi National
5 Force?

6 A. Yes, sir.

7 Q. And when was this?

8 A. This was sometime after, I'm not sure exact dates, but
9 sometime after I arrived in Iraq.

10 Q. And when did you arrive in Iraq?

11 A. Again, it was I believe December of 2009. But I do not
12 have a good recollection of when it was.

13 Q. And what sort of documentation did PFC Manning show you?

14 A. He showed me a translated copy of a report, I believe.

15 Q. Do you recall what that report dealt with?

16 A. I don't have the -- I don't remember the exact contents but
17 it was something to the effect of Iraqi nationals had arrested a
18 group of Iraqis or Moroccans printing anti-Iraq government
19 propaganda.

20 Q. Do you know why PFC Manning was showing you this
21 information?

22 A. He seemed to be concerned over the event.

23 Q. And why do you say that?

1 A. He brought it to me in a way he seemed -- that he was
2 concerned that this was happening.

3 Q. Do you know if PFC Manning showed this material to anyone
4 else?

5 A. I believe he showed it to his co-workers, but I was not in
6 the -- I was not in his section when he did so.

7 Q. After PFC Manning showed you the documentation that he had,
8 what did you do?

9 A. After he showed me documentation, I read it and I dropped
10 -- I dropped the idea. I didn't follow up on it or anything.

11 Q. Did PFC Manning ask you to follow-up on anything?

12 A. No.

13 Q. And based upon when you say, "I dropped the idea," how --
14 what was PFC Manning's response to you when he showed you this stuff?

15 A. I was ----

16 TC[MAJFEIN]: Objection, Your Honor. Hearsay.

17 MJ: The witness' response or his reaction ----

18 CDC[MR. COOMBS]: I'll go with reaction, Your Honor ----

19 MJ: All right. Sustained on the response.

20 CDC[MR. COOMBS]: Yes. Yes, Your Honor.

21 WIT: Could you repeat the question?

22 CDC[MR. COOMBS]: Yeah.

23

1 Questions by the civilian defense counsel [MR. COOMBS] continued:

2 Q. Based upon what he showed to you, what was his reaction
3 when you said, I basically kind of dropped the issue?

4 A. I dropped the issue after -- when he brought it up to me I
5 had told him or I had expressed to him that it was just what happens
6 because we're not in the United States, so different countries have
7 different laws and different rights. He didn't -- I don't remember
8 anything remarkable happening after that ----

9 Q. And without ----

10 A. ---- as far as a reaction.

11 Q. ---- And without saying anything that he might have said to
12 you, did you see any sort of physical reaction by PFC Manning?

13 A. The only thing that I saw from him at the time that I can
14 recall was that he was upset over the situation.

15 Q. Did PFC Manning ever come to you to complain about his
16 belief that no one in his unit seemed to care about the mission?

17 A. He might have, sir.

18 Q. Do you recall that or not?

19 A. Not at this time, sir.

20 Q. Do you recall ever saying something along those lines in a
21 sworn statement?

22 A. I might have, sir. But to recall the -- recall it
23 accurately I, I can only say that there was -- he had a deep belief

1 in news and what was going on. Whereas, other people were more
2 concerned about just going throughout their day.

3 CDC[MR. COOMBS]: All right. Thank you, Sergeant Sadtler. I
4 have no further questions.

5 MJ: Cross?

6 TC[MAJ FEIN]: Can I have a moment, Your Honor?

7 MJ: Yes.

8 [There was a pause while the trial counsel conferred at the counsel
9 table.]

10 **CROSS-EXAMINATION**

11 **Questions by the trial counsel [MAJ FEIN]:**

12 Q. Sergeant Sadtler, you're a signals intelligence analyst?

13 A. Yes, sir.

14 Q. How does that differ, in an unclassified manner, how does
15 that differ from all source intelligence analyst?

16 A. All source intelligence analyst deal with all forms of
17 intelligence. Whereas, a SIGINT analyst deals specifically with
18 signals.

19 Q. Prior to arriving at 2-10 Mountain and deploying with them
20 at same time Private First Class Manning, did you ever use a
21 Distributed Common Ground System Army station DCGS-A workstation?

22 A. No, sir.

23 Q. Do you recollect today whether you actually ever used one?

1 A. Yes, sir.

2 Q. Why would you not have used one?

3 A. DCGS-A is a system used by all source analysts, sir.

4 Q. And what network did you typically work on as a signals
5 intelligence, I'm sorry, not the network. But was it -- let me back
6 up and rephrase this. Was the network you worked on a higher
7 classification than SIPRNET, as a signals intelligence analyst?

8 A. It was higher than SIPRNET, sir.

9 Q. And -- but when you were deployed, you weren't actually
10 working in a signals intelligence analyst capacity, correct?

11 A. Correct.

12 Q. You were working on the TOC floor?

13 A. Yes, sir.

14 Q. And you would go back and see PFC Manning in the S-2
15 Section?

16 A. Yes, sir.

17 Q. Or he would come out and see you on the TOC floor?

18 A. Yes, sir.

19 Q. But to the best of your memory today, you never worked on a
20 DCGS-A computer ever?

21 A. No, sir.

22 Q. Also, when you did observe PFC Manning working on his
23 computers, did you observe him locking his computer?

1 A. Yes, sir.

2 Q. Did he lock it a lot?

3 A. Yes, sir.

4 Q. What do you mean by locking?

5 A. He locked the screen as though you were to leave the
6 workstation unattended.

7 Q. Is that what -- is that -- did you see that -- so did he --
8 when you saw him lock it, did he leave the computer station
9 unattended?

10 A. Not necessarily, no, sir.

11 Q. And was that the normal practice of those in the S-2
12 Section?

13 A. No, sir.

14 CDC[MR. COOMBS]: Your Honor, with regards just to the last
15 answer, I would object as to this witness' ability to testify to the
16 normal practice of the rest of the people in the T-SCIF. He worked
17 in the TOC, which is a totally separate section.

18 MJ: All right. Do you want to develop that a little bit more?

19 TC[MAJ FEIN]: Absolutely, Your Honor.

20 **Questions continued by the trial counsel [MAJ FEIN]:**

21 Q. When you worked in the TOC, did you personally observe
22 individuals while they were still sitting at their computer locking
23 their computer when another individual would walk up?

1 A. No, sir.
2 Q. Did you observe anyone ever doing that?
3 A. No, sir.
4 Q. In the TOC?
5 A. No, sir.
6 Q. When you visited the T-SCIF, did you ever observe anyone
7 doing that other than PFC Manning?
8 A. No, sir.
9 TC[MAJ FEIN]: No further questions, Your Honor.
10 MJ: Redirect?
11 CDC[MR. COOMBS]: Nothing based upon that, Your Honor.
12 MJ: Sergeant Sadtler, I just have a couple of questions for
13 you.

14 **EXAMINATION BY THE COURT-MARTIAL**

15 **Questions by the military judge:**

16 Q. What was the date that you arrived in Iraq?
17 A. I'm not sure on that date, ma'am.
18 Q. Was it before or after Christmas?
19 A. I couldn't tell you for certain but I believe it was around
20 Christmas. They had Christmas decorations and presents under a tree
21 still.
22 Q. So would you say Christmas was coming or had passed?
23 A. I'm not sure, ma'am.

1 Q. Okay. And how soon after your arrival did this
2 conversation with PFC Manning take place?

3 A. I do not know, ma'am.

4 Q. Was it a long time or a short time?

5 A. I believe I spent roughly 2 weeks before I transitioned
6 into working and then it would have been about another week before I
7 moved into the TOC permanently. So it would have been close to a
8 month before I could have really talked to him. But I don't have a
9 accurate date for you, ma'am.

10 Q. So just to make sure I understand this, did you arrive in
11 Iraq around Christmas and need 2 weeks, I guess to get sett -- before
12 you started working, and then another week in the TOC? Or did you
13 arrive earlier than that and start working around Christmas?

14 A. I arrived in December or January. I'm not sure of exactly
15 when it was, ma'am. I didn't keep track of it.

16 MJ: Okay. Any follow-up based on that?

17 CDC[MR. COOMBS]: No, Your Honor.

18 TC[MAJ FEIN]: No, ma'am.

19 MJ: Temporary or permanent excusal?

20 CDC[MR. COOMBS]: Permanent.

21 MJ: Do you agree?

22 TC[MAJ FEIN]: Yes, ma'am.

1 [The witness was permanently excused, duly warned, and withdrew from
2 the courtroom.]

3 CDC[MR. COOMBS]: Your Honor, the defense calls Captain Steven
4 Lim to the stand.

5 CAPTAIN STEVEN LIM, U.S. Army, was called as a witness for the
6 defense, was sworn, and testified as follows:

7 DIRECT EXAMINATION

8 Questions by the trial counsel [MAJ FEIN]:

9 Q. And you are Captain Steven Lim, 1st Army Division East?

10 A. That's correct.

11 Questions by the civilian defense counsel [MR. COOMBS]:

12 Q. Captain Lim, I want to first start off by asking you a few
13 questions about PFC Manning's experience level. Okay?

14 A. Yes, sir.

15 Q. Was PFC Manning one of the Soldiers that worked underneath
16 you?

17 A. Yes, sir, he was.

18 Q. And my understanding was that a period of time you became
19 the S-2 ---

20 A. Yes, sir.

21 Q. ---- in the brigade? Do you know whether or not Ft. Drum
22 was PFC Manning's first duty assignment?

23 A. Not for sure, sir. I believe it was.

1 Q. Do you know how many years PFC Manning was in the Army
2 prior to the time of the deployment?

3 A. Not exactly. A couple years, I assume.

4 Q. And why do you assume that?

5 A. I mean, he came in to -- as either private or private first
6 class and normally that's just a young Soldier coming into the
7 military so just based on that right there.

8 Q. And in your estimation was PFC Manning a junior analyst or
9 a ----

10 A. Yes, sir. A junior analyst.

11 Q. Why would you say that?

12 A. Usually it's based on rank and experience.

13 Q. And as a junior analyst, was conducting analysis one of PFC
14 Manning's strengths?

15 A. Yes, sir.

16 Q. And why do you say that?

17 A. He was very good with data mining, doing statistical
18 analysis, trends analysis, stuff like that.

19 Q. And what about putting together a collaborative picture of
20 all the information for a commander, was PFC Manning good at that?

21 A. I'd say he was average.

22 Q. Why do you say he was average?

1 A. Because sometimes that comes with experience. Learning how
2 to take every piece of the puzzle and put it actually together.
3 Sometimes that just comes with experience over time.

4 Q. In your estimation, was PFC Manning an experienced analyst?

5 A. No, sir.

6 Q. Was he still learning?

7 A. Yes, he was.

8 Q. Now even though he was not an experienced analyst at this
9 point did he have other strengths?

10 A. Are you talking about as an analyst?

11 Q. Yeah, as an analyst or an S-2?

12 A. Outside of the statistical analysis and the charts, he was
13 pretty good with using computers.

14 Q. What was his strengths with using computers?

15 A. He could manipulate some of the database in the DCGS better
16 than other analysts in the Section.

17 Q. And when you say manipulate the data, how so?

18 A. It was a little bit complicated to use. Some commands were
19 not easy to memorize and, you know, to pull certain statistical data
20 off of spreadsheets and put them into charts and graphs. Not
21 everyone knew how to do that initially.

22 Q. Did PFC Manning understand how to use the programs within
23 the DCGS-A computer?

1 A. Yes, sir, I believe so.

2 Q. And why do you believe that?

3 A. Because he was the one that we turned to for the
4 statistical analysis and geoplot it to the map primarily.

5 Q. And when you say you turned to him, what were you asking
6 him to do?

7 A. Just take certain -- you know, whatever the requirement
8 was, take certain patterns or trends, come up with some sort of
9 predictive analysis based off that and be able to portray that on a
10 map slide.

11 Q. And when you tasked him to do that, was PFC Manning able to
12 complete those tasks in a timely manner?

13 A. Yes, most of the time, sir, yes.

14 Q. Now I want to ask you a few questions about how you used
15 PFC Manning to create those products. If you had a product to
16 complete, would you assign it to a team leader?

17 A. Yes, I would.

18 Q. And who were the team leaders in the S-2 Section?

19 A. It was Staff Sergeant Balonek and Lieutenant Fields to
20 start out.

21 Q. And just with assignment of team leader, without using an
22 exact example, could you tell the Court how you might do that? As
23 far ----

1 A. Yes.

2 Q. ---- give an assignment to a team leader?

3 A. Give basic guidance and intent to the team leader on how
4 you would like something done, the end state. It's their task to
5 delegate -- further delegate and delineate the effort of work to
6 their Section to complete the assignment.

7 Q. So I guess after you assigned to it a team leader, would it
8 be typical for a team leader to then assign it to a junior analyst
9 like PFC Manning?

10 A. Yes, sir.

11 Q. And what aspects would they normally assign to a Soldier
12 like PFC Manning?

13 A. It -- depending on the Soldier's experience, it could be a
14 multitude of things from just researching a certain individual's name
15 to going back and looking up historic events for certain area in the
16 battle space. It's a wide range of tasks.

17 Q. Would creating graphs and charts be something that a junior
18 analyst might be tasked to do?

19 A. Yes, sir.

20 Q. And how would you use those graphs and charts?

21 A. We would use them for trend analysis to see, you know, if
22 certain attacks happened at certain times of the day or at certain
23 days of the week, months out of the year. So we could better have a

1 predictive analysis on what we would or would not do or what the
2 enemy would or would not do.

3 Q. Would you ever do any sort of quality assurance and quality
4 control on a product after you assigned it to a team leader?

5 A. Yes, I would, sir.

6 Q. And how so?

7 A. Normally when it's completed, it would be given to myself
8 after it went through a multiple chain of QA/QC for a better lack of
9 term. And I would always review before, especially if it was a
10 product I was going to brief to the commander, to make sure that one,
11 I knew the material and two, it was exactly what we were looking for.

12 Q. And I guess once the junior analyst completed their work
13 and it was reviewed by the team leader and reviewed by you, did there
14 ever come a time where you had to go back to either the team leader
15 or junior analyst to tell him to tweak the product ----

16 A. Yes, sir.

17 Q. ---- in some way?

18 A. Yes, sir.

19 Q. And why would you do that?

20 A. Maybe there was a small piece of information that was
21 missing or maybe something that the analyst forgot to put in there.
22 Or I just thought of something, hey, maybe we should add this real
23 quick at the end. Or, you know, those are some good examples.

1 Q. Did you ever have to back to PFC Manning to give him
2 guidance on what needed to be done?

3 A. I think I did once or twice, yes, sir.

4 Q. And why was that?

5 A. Probably due to time constraint. Probably needed it for a
6 suspense, you know, meeting coming up, just quick turnaround.

7 Q. Did PFC Manning ever miss anything from an assignment you
8 gave him?

9 A. There was a few times, yes, sir.

10 Q. And did it surprise you that PFC Manning might miss a task
11 or at least understanding the focus of a task?

12 A. No, it wasn't surprising.

13 Q. And why not?

14 A. Because like I said before, he was a junior analyst and
15 sometimes those things happen.

16 Q. Were there times where it took PFC Manning longer to
17 complete a project that you assigned him?

18 A. Yes.

19 Q. And why was that?

20 A. Sometimes, in his case, maybe he was assigned a task and he
21 didn't know where -- he thought he met the intent, but he really
22 didn't and he didn't go any farther, just stopped. So he had to

1 receive guidance the following day and then complete it, maybe, the
2 next shift.

3 Q. Was it surprising to you that he might not completely
4 understand a project and just stop?

5 A. No, sir.

6 Q. And again, why was that?

7 A. It's -- with a junior Soldier, that's to be expected
8 sometimes.

9 Q. Now prior to the deployment to Iraq, did PFC Manning get a
10 lot of chances to do analytical work in Garrison?

11 A. The only experience I know is at JRTC. I can't speak for
12 the rest of the time. Because I wasn't part of his element, part of
13 the pre-deployment phase.

14 Q. From your experience is a job of an analyst in Garrison --
15 a junior analyst in Garrison different from that same job in a
16 deployed environment?

17 A. Yes, sir. To a point it is, yes.

18 Q. Can you explain how so?

19 A. Yes, sir. Well, in Garrison we have other duties to do as
20 secur -- intelligence personnel. We have security functions dealing
21 with security clearances, physical security inspection, stuff like
22 that. And sometimes, unless you're ramping up for deployment, there
23 isn't a whole lot of opportunity to get on classified networks to

1 kind of become better at your job. There's opportunities but it all
2 depends on the unit's mission at the time on how often a Soldier gets
3 to get on the -- practice those skills.

4 Q. And then I guess in deployed environment, how has that
5 changed then?

6 A. Usually the -- your sole focus is the intelligence piece as
7 opposed to the security piece, because usually the security pieces
8 are already in place.

9 Q. So you'd be working longer on the SIPRNET?

10 A. Yes, very -- much longer. Yes, sir.

11 Q. Now I want to ask you a couple questions about what PFC
12 Manning did during the deployment when he was not completing tasks
13 for you. Okay?

14 A. Okay, sir.

15 Q. What shift did PFC Manning primarily work on?

16 A. The night shift, sir.

17 Q. And what threat group did he work on?

18 A. The Shia Threat Group.

19 Q. As a Shia Threat Group analyst, what did PFC Manning
20 primarily do on the night shift?

21 A. Usually research topics that we came up with during the day
22 that we need to further investigate or finishing products that were
23 started during the day and they weren't completed so they were

1 finished at night. Or just overall research in general on targets -
2 on current targets that we had that we needed to get more information
3 on.

4 Q. Did he ever pull names in response to RFI, request for
5 information?

6 A. Yes, sir. We all did.

7 Q. And what is entailed in pulling, I guess, names in response
8 to RFIs?

9 A. Sometimes a unit would detain someone or have someone for
10 questioning and then we would just check our database to see if there
11 was any historical information on that person to see if it was of
12 value or if they were possibly wanted or a warrant for their arrest.

13 Q. And would that task primarily be assigned to the night
14 shift?

15 A. Well, typically would be assigned to when the event
16 happens. Basically occur -- as it happens it would be assigned. So
17 depending on what time of the day it was would be depending on what
18 time that information happened.

19 Q. Were there products that were being completed by the night
20 shift designed to give commanders on the battlefield real time
21 information?

22 A. Usually not, no, sir.

23 Q. What were they -- what were those products used for?

1 A. Like, planning or like future operations. On most cases.
2 Q. Now, I want to ask a few questions about how the T-SCIF was
3 run. Okay?
4 A. Yes, sir.
5 Q. Did the brigade T-SCIF have an SOP?
6 A. I don't know, sir.
7 Q. I'm sorry?
8 A. I don't know.
9 Q. Do you recall saying that you -- it did not have an SOP?
10 A. I don't, sir.
11 Q. Would anything help refresh your memory?
12 A. Yes, sir. My previous testimony would.
13 **[There was a pause while the defense counsel conferred at the counsel**
14 **table.]**
15 CDC[MR. COOMBS]: I'm showing the witness what's been marked
16 as Defense Exhibit Quebec for Identification.
17 Captain Lim, if you would please just read question 1 to
18 yourself silently and your answer on Page 2 and when you're done look
19 up.
20 MJ: I'm sorry, that's Defense Exhibit?
21 CDC[MR. COOMBS]: Quebec, ma'am. I'm retrieving Defense
22 Exhibit Quebec for Identification from the witness.
23

1 Questions continued by the civilian defense counsel [MR. COOMBS]:

2 Q. Captain Lim, does that refresh your memory on whether or
3 not the T-SCIF had an SOP?

4 A. Yes, sir.

5 Q. And did the T-SCIF have an SOP?

6 A. No.

7 Q. Do you know why the T-SCIF did not have an SOP?

8 A. I do not, sir.

9 Q. Would an SOP let the Soldiers know what the proper
10 procedures were within a T-SCIF?

11 A. Yes, it would.

12 Q. Would the SOP let the Soldiers know what they could and
13 could not do within the T-SCIF?

14 A. Yes, it would.

15 Q. Do you know if analysts were allowed to listen to music in
16 the T-SCIF?

17 A. Yes, they were.

18 Q. And how much music or where did the music come from?

19 A. Originally when we first arrived it was on the shared drive
20 we had and it then it could also probably be found -- it was also
21 found on the SIPRNET as well.

22 Q. Do you know how much music was on the shared drive?

23 A. No, sir, I don't.

1 Q. Were analysts allowed to play music on their DCGS-A
2 computers?

3 A. Yes, they were.

4 Q. Did anyone in the S-2 section say that listening to music
5 on your DCGS-A computers was against the user agreement?

6 A. No, sir.

7 Q. Were analysts allowed to bring in movies into the T-SCIF?

8 A. No, sir.

9 Q. And why do you believe they were not allowed to bring in
10 movies?

11 A. It was just against the regulation.

12 Q. So if an analyst brought in a CD with a movie on it that
13 they might have purchased as the S-2 you would say that that's not
14 permitted in the T-SCIF?

15 A. That's correct.

16 Q. If you saw that, what would you do?

17 A. Make an on the spot correction.

18 Q. And why would you not permit movies to be in the T-SCIF?

19 A. You just don't know if it's a -- maybe a bootlegged disc or
20 something. It might have a harmful program or some software on it.

21 Q. Would bringing movies into the T-SCIF and then playing them
22 on your DCGS-A computer be against the user agreement?

23 A. I believe it would.

1 Q. Why do you believe that?

2 A. Just because it's against regulation.

3 Q. Do you know what an executable file is?

4 A. Yes, sir, I do.

5 Q. And how do you know what an executable file is?

6 A. Just through personal experience using them.

7 Q. Can you tell the Court what your personal experience is?

8 A. In college, I made them on the computer using a video game.

9 To save memory, you could drag the shortcut to your desktop and then

10 you could run -- you could leave the CD -- you could insert the CD

11 and click on the shortcut and it would run the file from the CD as

12 opposed to keeping the program on the actual computer.

13 Q. Do you know if analysts had mIRC chat as an executable file

14 on their DCGS-A computer?

15 A. I don't know if it's executable or not.

16 Q. Did you work off of a DCGS-A computer?

17 A. I did, sir.

18 Q. Did you have mIRC Chat on your computer?

19 A. I had mIRC Chat on my computer, yes, sir.

20 Q. Do you know if it was an executable file or not?

21 A. I do not know.

1 Q. Did anyone in the S-2 section say that running executable
2 files as a shortcut from the desktop of your computer was against the
3 user agreement?

4 A. No. That was never put out.

5 Q. Did anyone in the S-2 section say that running an
6 executable file from a CD in your DCGS-A computer was permitted or
7 not?

8 A. No, no one ever said that, sir.

9 Q. Okay. Do you know if that practice was being done by
10 Soldiers?

11 A. I don't know, sir.

12 Q. Do you know if anyone said that you could do that?

13 A. No, I don't.

14 Q. So I take it you -- do you know whether or not anyone ever
15 said that using an executable file that was not part of the baseline
16 package for the DCGS-A computer was against the user agreement?

17 A. I don't know if that was ever said, sir.

18 Q. Now I want to ask you a few questions about what an analyst
19 could look at on the shared drive. Okay?

20 A. [Affirmative response.]

21 Q. Were any of the files on the shared drive encrypted?

22 A. I don't know, sir.

1 Q. Do you know if the shared -- or if any of the files in the
2 shared drive was compartmentalized?

3 A. Each section had their own.

4 Q. And so each section had their own files?

5 A. Yes, usually they were categorized into whatever staff
6 Section you belonged to.

7 Q. Do you know if others could go to a different section to
8 look at ----

9 A. Yes, you could.

10 Q. ---- what they had?

11 A. You could go anywhere.

12 Q. Did anyone put out any sort of rules on what you could and
13 could not look at on the shared drive?

14 A. No, sir.

15 Q. Now let's talk about the SIPRNET. Was everything on the
16 SIPRNET classified Secret and below?

17 A. Yes, it was.

18 Q. And other than information that might be password
19 protected, could an analyst access anything that was on the SIPRNET?

20 A. Yes, he could.

21 Q. Do you know if your section conducted any training on what
22 an analyst could and could not view on the SIPRNET?

23 A. I do not.

INSTRUCTIONS FOR PREPARING AND ARRANGING RECORD OF TRIAL

USE OF FORM - Use this form and MCM, 1984, Appendix 14, will be used by the trial counsel and the reporter as a guide to the preparation of the record of trial in general and special court-martial cases in which a verbatim record is prepared. Air Force uses this form and departmental instructions as a guide to the preparation of the record of trial in general and special court-martial cases in which a summarized record is authorized.

Army and Navy use DD Form 491 for records of trial in general and special court-martial cases in which a summarized record is authorized. Inapplicable words of the printed text will be deleted.

COPIES - See MCM, 1984, RCM 1103(g). The convening authority may direct the preparation of additional copies.

ARRANGEMENT - When forwarded to the appropriate Judge Advocate General or for judge advocate review pursuant to Article 64(a), the record will be arranged and bound with allied papers in the sequence indicated below. Trial counsel is responsible for arranging the record as indicated, except that items 6, 7, and 15e will be inserted by the convening or reviewing authority, as appropriate, and items 10 and 14 will be inserted by either trial counsel or the convening or reviewing authority, whichever has custody of them.

1. Front cover and inside front cover (chronology sheet) of DD Form 490.
2. Judge advocate's review pursuant to Article 64(a), if any.
3. Request of accused for appellate defense counsel, or waiver/withdrawal of appellate rights, if applicable.
4. Briefs of counsel submitted after trial, if any (Article 38(c)).
5. DD Form 494, "Court-Martial Data Sheet."
6. Court-martial orders promulgating the result of trial as to each accused, in 10 copies when the record is verbatim and in 4 copies when it is summarized.
7. When required, signed recommendation of staff judge advocate or legal officer, in duplicate, together with all clemency papers, including clemency recommendations by court members.

8. Matters submitted by the accused pursuant to Article 60 (MCM, 1984, RCM 1105).

9. DD Form 458, "Charge Sheet" (unless included at the point of arraignment in the record).

10. Congressional inquiries and replies, if any.

11. DD Form 457, "Investigating Officer's Report," pursuant to Article 32, if such investigation was conducted, followed by any other papers which accompanied the charges when referred for trial, unless included in the record of trial proper.

12. Advice of staff judge advocate or legal officer, when prepared pursuant to Article 34 or otherwise.

13. Requests by counsel and action of the convening authority taken thereon (e.g., requests concerning delay, witnesses and depositions).

14. Records of former trials.

15. Record of trial in the following order:

- a. Errata sheet, if any.
- b. Index sheet with reverse side containing receipt of accused or defense counsel for copy of record or certificate in lieu of receipt.
- c. Record of proceedings in court, including Article 39(a) sessions, if any.
- d. Authentication sheet, followed by certificate of correction, if any.
- e. Action of convening authority and, if appropriate, action of officer exercising general court-martial jurisdiction.
- f. Exhibits admitted in evidence.
- g. Exhibits not received in evidence. The page of the record of trial where each exhibit was offered and rejected will be noted on the front of each exhibit.
- h. Appellate exhibits, such as proposed instructions, written offers of proof or preliminary evidence (real or documentary), and briefs of counsel submitted at trial.